IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CITY OF COEUR D'ALENE, IDAHO, a municipal corporation; J. K. COE, Mayor; A. GRANTHAM, Treasurer; WILLIAM T. REED, Clerk; LEE STODDARD, OTTO GLADDEN, FRANK H. LAFRENZ, JOSEPH LOIZEL, O. M. HUSTED, CASSIUS ROBINSON, S. H. McEUEN and C. C. HODGE, Members of the City Council of said City of Coeur d'Alene, Idaho, and HAROLD L. ICKES, as Federal Emergency Administrator of Public Works,

Appellants,

vs.

THE WASHINGTON WATER POWER COMPANY, a corporation,

Appellee.

Transcript of the Record

Upon Appeal from the United States District Court for the District of Idaho, Northern Division

STPAUL & CO., INC., STATIONERS-PRINTERS, BOISE

IN THE

United States
Circuit Court of Appeals
For the Ninth Circuit

CITY OF COEUR D'ALENE, IDAHO, a municipal corporation; J. K. COE, Mayor; A. GRANTHAM, Treasurer; WILLIAM T. REED, Clerk; LEE STODDARD, OTTO GLADDEN, FRANK H. LAFRENZ, JOSEPH LOIZEL, O. M. HUSTED, CASSIUS ROBINSON, S. H. McEUEN and C. C. HODGE, Members of the City Council of said City of Coeur d'Alene, Idaho, and HAROLD L. ICKES, as Federal Emergency Administrator of Public Works,

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

HENRY T. HUNT,
Special Assistant to Attorney General,
Washington, D. C.
JOHN A. CARVER,
U. S. District Attorney,
E. H. CASTERLIN,
Assistant U. S. District Attorney,
FRANK GRIFFIN,
Assistant U. S. District Attorney,
Boise, Idaho,
W. B. McFARLAND,
C. H. POTTS,
Coeur d'Alene, Idaho,

Attorneys for Appellant.

JOHN P. GRAY,
W. F. McNAUGHTON,
ROBERT H. ELDER,
Coeur d'Alene, Idaho,

Attorneys for Appellee.

INDEX

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION

THE WASHINGTON WATER POWER COMPANY, a corporation,

Plaintiff,

vs.

CITY OF COEUR D'ALENE, IDAHO, a municipal corporation; J. K. COE, Mayor; A. GRANTHAM, Treasurer; WILLIAM T. REED, Clerk; LEE STODDARD, OTTO GLADDEN, FRANK H. LAFRENZ, JOSEPH LOIZEL, O. M. HUSTED, CASSIUS ROBINSON, S. H. McEUEN and C. C. HODGE, Members of the City Council of said City of Coeur d'Alene, Idaho, and HAROLD L. ICKES, as Federal Emergency Administrator of Public Works,

Defendants.

No. 1268

AMENDED BILL OF COMPLAINT

Filed December 6, 1934.

Plaintiff, the Washington Water Power Company, brings this its Amended Bill of Complaint against the defendants above named, and in behalf thereof respectfully shows:

I.

The plaintiff is now and at all of the times mentioned

zens, residents and inhabitants of the State of Idaho, in this complaint has been a corporation organized and existing under and by virtue of the laws of the State of Washington, and is now and at all of the times herein mentioned has been a citizen of the State of Washington, with its principal place of business at the City of Spokane, Washington, and is now and at all of the times herein mentioned has been authorized and empowered to do business in the State of Idaho and to acquire and hold property in said state by virtue of a full compliance with the laws of the State of Idaho relating to foreign corporations.

II.

The City of Coeur d'Alene, Idaho, is a municipal corporation created, organized and existing under and by virtue of the laws of the State of Idaho, a citizen of said state and a resident and inhabitant of the District of Idaho, Northern Division.

The defendant, J. K. Coe, is the duly elected, qualified and acting Mayor of the City of Coeur d'Alene, Idaho. The defendant A. Grantham, is the duly elected, qualified and acting Treasurer of said city. The defendant, William T. Reed, is the duly elected, qualified and acting City Clerk of said city. The defendants, Lee Stoddard, Otto Gladden, Frank LaFrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, are the duly elected, qualified and acting members of the City Council of said city. All of the above named individual defendants are citi-

and of the District of Idaho, Northern Division.

III.

The defendant, Harold L. Ickes, is the appointed and acting Federal Emergency Administrator of Public Works, appointed under the provisions of Title II of the National Industrial Recovery Act.

That the said Harold L. Ickes is a citizen of the State of Illinois. He was not at the time of the commencement of this action, he has not been at any time since, and he is not now a citizen or resident of either the State of Idaho, or the State of Washington. That the said Harold L. Ickes as Federal Administrator of Public Works has consented to enter a general appearance herein if made a party defendant.

IV.

The jurisdiction of the United States District Court for the District of Idaho, over this suit is invoked and depends upon the ground that the suit is of a civil nature, arises under the Constitution of the United States, involves the construction and application of the Fifth Amendment and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and also involves the constitutionality of and the construction and interpretation of the National Industrial Recovery Act.

That the said suit is also one between citizens of different states as appears by the allegations of paragraphs I and II of this Amended Bill of Complaint,

and the value of the matter in dispute in this suit, exclusive of interest and costs, is in excess of $3000. The property rights and franchises of the plaintiff for the protection of which the plaintiff invokes the aid of this court, and the value of the right of the plaintiff to carry on its business free from the interference herein complained of, are of a value in excess of $10,000 all as is more specifically hereinafter set forth, and the funds, the borrowing and expenditure of which the plaintiff seeks to enjoin herein, amount to more than $100,000 as is hereinafter more specifically set forth.

V.

The Washington Water Power Company is authorized and empowered by its articles of incorporation to engage in the generation, distribution and sale of electric energy and power and to erect, construct, maintain and operate electric power plants and transmission lines for the development and use of water power, and to do all things necessary and incident thereto; to furnish electricity for lighting within cities in the State of Idaho; and to distribute and sell electric power and energy to the inhabitants thereof.

Plaintiff is now and at all of the times herein mentioned has been a public service corporation in the performance and discharge of said duties within the State of Idaho.

Plaintiff for many years last past has been and now is the owner of a hydroelectric power plant and dams situated in the Spokane River at Post Falls, Idaho,

about ten miles distant from the City of Coeur d'Alene, and also at all of said times and for many years last past has been the owner of several hydroelectric plants situated on the Spokane River in the State of Washington.

Said power plants are connected by transmission lines for the purpose of affording continuity of service to the many customers of plaintiff and users of power in northern Idaho and eastern Washington. Plaintiff furnishes electric power for practically all uses in the northern counties of the State of Idaho, and particularly in the County of Kootenai, in said state. The power transmission lines of plaintiff extend into the County of Kootenai, Shoshone, Bonner, Latah, Nez Perce, Benewah, Clearwater, Idaho and Lewis in said State of Idaho. Plaintiff has been the owner of some of said hydroelectric power plants and transmission lines for more than twenty-five years and has acquired others within the last ten years.

Plaintiff has ample power, capacity and facilities to serve all persons and uses now existing or reasonably to be anticipated for many years in the said Counties of Northern Idaho.

The plants, transmission lines and facilities of the plaintiff had been designed and constructed to render electrical services to the above territory. Plaintiff has been authorized by the State of Idaho, either by general laws or by authority of the Public Utilities Commission of the State of Idaho, to construct, own, operate and maintain said plants, facilities and lines.

Its properties, electric power plants, transmission lines and other facilities are modern and efficient, and it has at all times been equipped to and does render a superior, completely adequate and sufficient electric utility service in the district covered by its lines in Idaho.

Plaintiff further alleges that it has acquired electric light and power distribution systems in various cities and villages of northern Idaho and in each of said cities and/or villages it renders electric light and power service to the inhabitants of said cities and to the district and territory adjacent to said municipalities.

By reason of its operation of central stations equipped with generating units and the location of its transmission lines extending from said central stations, it has been enabled to supply electric energy throughout said area to municipalities which would have been unable otherwise to secure adequate electrical service.

Plaintiff has expended in the construction, acquisition and improvement of its said electrical facilities in the State of Idaho, more than the sum of $5,000,000.

Plaintiff has issued and outstanding, bonds, debentures, preferred stock and common stock. A substantial portion of its bonds and preferred stock have been sold to consumers, employees and other citizens and investors residing in the territory in which it operates. More than 200 citizens of the City of Coeur d'Alene alone are the owners of the preferred stock of the plaintiff and many other citizens of Idaho hold shares of said preferred stock and the bonds of this plaintiff.

The decrease of revenues experienced by plaintiff during the years of the depression, the increase of taxes, state and Federal, and the increased operating expenses have reduced its net earnings very substantially.

VI.

By an ordinance approved October 19, 1903, being ordinance No. 94, the Chairman and Board of Trustees of the Village of Coeur d'Alene, Idaho, the predecessor of the defendant City of Coeur d'Alene, granted to Consumers Company, a corporation of Idaho, a franchise for furnishing to the inhabitants of the Village of Coeur d'Alene, Idaho, electricity for lighting and other purposes for a period of fifty years from the date thereof, and the plaintiff has become and now is the owner of the franchise granted by said ordinance, and it and its predecessor in interest have rendered electrical services to the City of Coeur d'Alene and the Village of Coeur d'Alene under said ordinance for more than thirty years. A copy of said ordinance is attached hereto, marked Exhibit "B" and made a part hereof.

VII.

In the year 1930, plaintiff purchased the electric power and light distribution system of the City of Coeur d'Alene, and has since owned, maintained and operated the same. Since acquiring the said distribution system, plaintiff has expended a very substantial sum of money, to-wit, more than the sum of $33,000 in improving and reconstructing said system and improving the facilities

thereof, and the sum of $27,000 for installation of new transformers to insure continuity of service by providing two independent connections through which to secure power, and during the same time has reduced the rates in said city for the use of electric light and power.

Plaintiff further alleges that all of its rates charged for electric light services rendered in the State of Idaho are subject to regulation and control by the Public Utilities Commission of said state. While a predecessor in interest of plaintiff owned said Coeur d'Alene light and power plant and distribution system, and in the year 1922, the rates charged for electrical services in Coeur d'Alene, were fixed by the Public Utilities Commission of Idaho after a hearing as to the value of the plant, depreciation, cost of operation, volume of business, earnings and other matters. Said rates for light and power in the City of Coeur d'Alene so fixed have remained the same except with the approval of the Public Utilities Commission of the State of Idaho, plaintiff has made and put into effect four reductions in different rate schedules which rate reductions aggregate $11,400 annually.

The City of Coeur d'Alene has a population according to the Federal census of 1930 of 8297. Plaintiff furnishes electric service to all classes of customers in said city, who number 2377, and furnishes electric services to approximately 332 additional customers residing in territory adjacent to said city. Plaintiff supplies all of the electric light and power sold and distributed in said City of Coeur d'Alene.

Plaintiff has an investment in the distribution system located in the City of Coeur d'Alene, and its environs, exclusive of generating and transmission equipment, of more than $200,000. Electric service has been rendered the City of Coeur d'Alene, by plaintiff and its predecessors in interest for more than thirty years, and plaintiff now possesses lawful and valid operating rights for the conducting of its electric business in said city.

Plaintiff is a taxpayer of the United States, of the State of Idaho, of the County of Kootenai, of the City of Coeur d'Alene, and of other taxing districts in the State of Idaho, and is the owner of extensive properties subject to taxation by said taxing authorities. For the year 1934, as nearly as can be estimated, the income taxes, capital stock taxes and energy taxes the plaintiff paid to the United States aggregated a sum in excess of $266,000 and plaintiff has paid or is accruing for payment said amount of money.

Taxes in the State of Idaho paid by this plaintiff for the year 1933 upon its electric generating, transmission and distribution systems amounted to the sum of $214,-815.62, of which said sum there was paid to the County of Kootenai, for state, county and municipal taxes within said county the sum of $66,547.94, and in addition thereto, plaintiff paid to irrigation districts of said Kootenai County and adjacent and tributary to said City of Coeur d'Alene the sum of $10,855.74 in lieu of taxes which it would otherwise have been required to pay to the state and its subdivisions a total of $77,403.-68. The sum of $10,855.74 represents the amount of

taxes upon the property of plaintiff used for generating and delivering electric power to the extent such property is used for furnishing power for pumping water for irrigation or drainage purposes in Kootenai County. The exemption accrues under the laws of Idaho to the benefit of the consumers of such water power and the amount so required to be paid by this plaintiff out of its total taxes is fixed by the State Board of Equalization of said state. In this connection, plaintiff alleges that the gross electric revenue received from customers in the County of Kootenai for the year 1933 amounted only to $148,333.16, more than one-half of its total gross revenue being repaid in state, county and other municipal taxes and in payments to said irrigation customers. In addition thereto, the plaintiff paid to the State of Idaho on account of power generation in said county a considerable sum of money under what is known as the "Kilowatt Hour Tax." All of the property of the plaintiff in said City of Coeur d'Alene is subject to said State, county, city, school and other municipal taxes.

VIII.

The City Council of the City of Coeur d'Alene, on or about the 2nd day of November, 1933, enacted and on the same day the Mayor approved an ordinance, being Ordinance No. 713, calling an election for the purpose of submitting to the voters of the city a proposition for incurring an indebtedness of $300,000 by the issuance of municipal bonds of said city in said principal amount

for the purpose of paying the cost and expenses of the acquisition by purchase or by construction of a light and power plant and distribution system for said city, a copy of said ordinance being attached hereto, marked Exhibit "A" and made a part hereof.

At or about said time the City Council of the City of Coeur d'Alene, as aforesaid, adopted said ordinance 713, providing for the incurring of a municipal indebtedness of $300,000 for the purpose of paying the costs and expenses of the acquisition by purchase or construction of an electric power plant and lighting system, and said City Council of said city also passed an ordinance providing for the incurring by the City of Coeur d'Alene of a municipal indebtedness of $300,000 by issuance of municipal bonds of said city for the purpose of paying the costs and expenses of the acquisition by purchase or construction of a water works system by said city. An election was provided for in each of said ordinances and was called and held on the same day, to-wit: December 12, 1933, submitting for approval of the voters the proposition of incurring a municipal indebtedness of $300,000 for each of said systems, and the issuance of municipal bonds in such sums for each thereof, and said election resulted in the approval of both propositions by more than two-thirds of the voters voting at said election.

Reference is made to the ordinance for the acquisition of a water system for the reason that in the application of the City of Coeur d'Alene to the Federal Emergency Administration of Public Works, hereafter referred to,

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Reference is made to the ordinance for the acquisition of a water system for the reason that in the application of the City of Coeur d'Alene to the Federal Emergency Administration of Public Works, hereafter referred to,

IX.

request was made for funds for both systems.

At a special meeting of the City Council of the City of Coeur d'Alene, held at 5 o'clock P. M., on December 14, 1933, it was declared by a motion that the said bond election had carried by the necessary two-thirds majority and thereupon the said city council adopted a motion that the mayor, city clerk, city attorney and city engineer be authorized to prepare an application to be made to the Federal Emergency Administration of Public Works for funds to construct a water works system and light and power plant in the City of Coeur d'Alene.

Pursuant to said action, the defendants, the mayor and the city clerk, together with the other officers designated by said motion adopted by the City Council, on the same day, December 14, 1933, executed and shortly thereafter filed with the Federal Emergency Administration of Public Works an application wherein a loan was requested of $650,000 and a net loan of $475,000 which in said application is alleged to exclude a 30% grant or gift for the cost of labor and materials to be used in the construction of said electric generating plant, distribution and street lighting system and said water system.

In said application, it appears that a report had been made by an engineer employed by the said City of Coeur d'Alene and which report contained plans for the construction of said two systems. In said application, however, it is stated that the total cost of the power plant, electric distribution system and street lighting

system is estimated to be $337,580.00 which is in excess of the amount of indebtedness authorized to be incurred for the purposes mentioned in Ordinance 713 as aforesaid, and the election held under said ordinance. Of said sum of $337,580 the total cost of labor and materials is estimated at $276,512.91 and the contractor's profit thereon at $27,578.09, a total of $304,091.00 and the other costs and expenses of said construction are estimated to be $33,480.00.

The amount estimated by said engineer to be expended for labor in the construction of the Diesel engine generating plant is the sum of $10,225.00 and of the distribution system, $19,115.25. Another item given is plant wiring and equipment, $332.50, a total of $29,672.75. On the building to be used to house the Diesel power plant and the pumps for the water system, the labor is estimated at the sum of $6900. Both the said report of the engineer and said application set forth that the cost of the complete municipal electric power and light system would be in excess of the sum authorized to be expended by the said Ordinance No. 713.

X.

Plaintiff promptly filed a protest with the State Advisory Board of the Federal Administration of Public Works against the approval of said application and the granting, giving and loaning of said funds, setting forth therein detail the reasons why said application should not be approved and said gift, grant and loan should not be made.

XI.

Plaintiff is informed and believes and upon such information and belief alleges the Federal Emergency Administration of Public Works at Washington, D. C., has approved the aforesaid application of the defendant city, and will shortly advance funds to the city in the amount of $337,580.00 for the purpose of constructing an electric power plant and power distribution system. Of said sum, part is to be a loan to the city and part is designated as a gift or grant, the exact amounts of each thereof being unknown to plaintiff. In the application the city asks a gift or grant amounting to 30% of the total cost of labor and materials, plus contractor's profit, which would amount to $91,230. The defendant city will undertake to issue and pledge its general obligation bonds as security for the amount of the loan and will undertake the construction of a municipal power and generating plant and electric distribution system by the application of the proceeds of the loan and of the said gift or grant.

Plaintiff is informed and believes and upon said information and belief alleges that said city and the defendants as its officers propose and threaten to enter into a contract with said Federal Emergency Administration of Public Works by the terms of which said contract the said city will undertake and agree to construct a Diesel Engine electric power plant and power distribution system costing at least the sum of $337,580.

The acts of the defendants constitute the incurring of an indebtedness and/or creation of a liability exceeding the annual income and revenue of the City of Coeur d'Alene for that year without the assent of two-thirds of the qualified voters, voting at an election held for that purpose and without provision being made for the collection of an annual tax sufficient to pay the interest on such indebtedness and/or liability as it falls due and to constitute a sinking fund for the payment of the principle thereof as provided in Section 3 of Article VIII of the Idaho Constitution.

XII.

All matters relating to the government, franchises and business of the defendant city are managed and conducted by the mayor and city council of said city. The aforesaid officials have had no experience in the construction and operation of electric utilities and have had no sufficient information or knowledge of the costs, methods and plans of construction and operation of electric generating plants and distributing systems to enable them to exercise ordinary prudent judgment and discretion concerning such business.

Under the laws of the State of Idaho, the Public Utilities Commission of the state has power to regulate and supervise the rates and services of the plaintiff in supplying power and light. Under the laws of Idaho, the mayor and city council of the defendant city would have the exclusive power of regulation of the rates and supervision of the service of any municipally owned

utility and the Public Utilities Commission of the State of Idaho has no powers of regulation or supervision over such municipal utilities.

XIII.

Prior to the election held to ratify or reject the proposed bond issue, one Franklin P. Wood, an engineer from Denver, Colorado, was employed by the defendants to make a report to the city, outlining a plan and reporting as to the feasibility, desirability and cost of building a municipal light and power system by the city. Such report was made and purports to show the cost of a complete generating plant and distribution system for the said city, the revenues, gross and net, which the city would receive therefrom, and the cost of operation and other expenses thereof.

On or about the 21st day of November, 1933, the said report was released and publicity given in the press, and otherwise, to the contents thereof. The defendant officers conducted a campaign in which the citizens of the city were urged to vote in favor of authorizing the construction of a municipal light and power plant and to pay therefor, and in which statements of said Wood were given publicity and advertisement, and in addition thereto, a public meeting was held at which said Wood appeared and spoke in favor of said project.

The report of said Wood and the facts and figures set forth therein are grossly erroneous in a large number of conclusions and estimates, and are not in accordance with the apparent and easily ascertained facts relating

to conditions affecting the construction and operation of such proposed municipal plant.

In the following particulars, the said engineer's report is erroneous and based upon mistaken and erroneous conclusions and inaccurate in statement of facts:

(1) In the report furnished by said engineer, Franklin P. Wood, previous to said election, it was stated as follows:

> "In conclusion attention should be drawn to the fact many times pointed out before, that the city and people of Coeur d'Alene are paying for the water and light systems now, but not getting them. Even though it might be possible to only get a part of the business now there is no question but that the bonds will be paid out without the people being assessed anything in the way of taxes to pay therefor."

Said statement from said report signed by said Wood was published in the Coeur d'Alene Press, a daily newspaper published at Coeur d'Alene, on November 21, 1933, and in the Kootenai County Leader, a weekly newspaper published at Coeur d'Alene, Idaho, in its issue of November 21, 1933. Said Kootenai County Leader is owned and published by the defendant mayor, J. K. Coe.

(2) Said report assumed and stated that inasmuch as 80% of the people had signified their willingness to buy service from a city-owned system the figures to be

used by the engineer could be computed upon the assumption that 80% of the gross business in Coeur d'Alene could be obtained by the municipal plant. It assumed that the gross revenues from electricity in the city amount to $120,000 and that the city would receive 80% thereof, which would be $96,000. In said report it was assumed that 2,500,000 kilowatt hours per annum would be required for electrical service and 1,110,000 kilowatt hours per annum for pumping water. The assumption that because 80% in number of the electric users in the City of Coeur d'Alene had agreed, if they did agree, to purchase their electric service from the municipal plant, involves a further concealed assumption that said 80% represented 80% of the gross consumption.

Plaintiff has no list of said contracts, but is informed and believes and therefore alleges the fact to be that in amount of consumption, the same do not represent 40% of the electric energy used by consumers in the City of Coeur d'Alene. Plaintiff alleges that said alleged contracts are void and of no effect. Said alleged contracts were all signed at a time when said defendant city was endeavoring to execute a scheme to build a plant from the sale of bonds which were to be a lien upon the revenues of the plant and not general obligation bonds of the city.

The inaccuracy of said assumptions and facts is further disclosed by the report of said Wood attached to the application of the city to the Federal Emergency Administration of Public Works. In the report made

in December, 1933, something over a month after the previous report, the said engineer assumes (based upon the same 80% of the gross consumption being purchased from the municipal plant) a consumption of electric current by revenue producing customers within the city of 3,000,000 kilowatt hours per annum, at 3c per kilowatt hour, a total of $90,000 which said 3,000,000 kilowatt hours included the water pumping for the proposed municipal water system. In the said application, it is further stated in the estimate of future operating results for the municipal electric system there would be 2600 customers in the year 1935. The actual number of customers which the plaintiff has in Coeur d'Alene is 2377, which is as many customers as the plaintiff has ever had in said city.

The said Wood in his report, which was attached to the said application to the Federal Emergency Administration of Public Works, estimated that the amount to be paid for the pumping of water would be $12,800 per annum, and the electric power required 750,000 kilowatt hours per annum, which amounts to 1.7c per kilowatt hour (given in said report at 1.6c). This would leave for sale to consumers within the city 2,250,000 kilowatt hours per annum, which would be required to produce the balance of the revenue estimated of $90,000 or $77,200 per annum, an average cost to the consumer of 3.43c per kilowatt hour. The plaintiff now receives in Coeur d'Alene, an average of 3.33c per kilowatt hour, exclusive of power used for water pumping.

(3) In the report made in November, 1933, prior

to the election, by the said Wood, it is asserted that except for the interest charges, electricity could be furnished to the ordinary household for 1.5c per kilowatt hour. In the report prepared by the same Wood in December, attached to the application of the city to the Federal Emergency Administration of Public Works, the said Wood stated that without considering allowances for interest and depreciation, the average cost per kilowatt hour of current to be distributed would be approximately 1.6c per kilowatt hour, stating that the actual operating costs, including everything but interest and depreciation, is $47,000 for the power plant and distribution system, including the labor operation of the water system pumps.

(4) The report discloses that two sections of the city were omitted from any distribution service and the voters were not advised of that fact. In fact, the report apparently did provide for service throughout the City of Coeur d'Alene. That two sections of the city were omitted, is shown by the engineer's report attached to the application of the city to the Federal Emergency Administration of Public Works.

XIV.

In the Kootenai County Leader, above referred to, the newspaper owned and published by the defendant mayor, in its issue of December 8, 1933, just prior to said election, appeared a letter signed by the defendant, S. H. McEuen, as Chairman of the Fire, Light and Water Committee of the City of Coeur d'Alene. In

said communication, the said defendant McEuen referred to the investigations of the engineer, and stated that the cost of the entire new water, light and power generating and distribution systems would be completely covered by the sum of $600,000; that the city intended to bring out street lighting better than it has had in the past; to connect all porch lights on the city side of the meter so that each resident can have a porch light all night, and retain the present street lighting system and improve the same. The said McEuen also stated that the city proposed to have a much larger and better designed electric distribution system with a higher voltage on the primary side of the transformers, this will mean hotter electricity for home use. Said McEuen also stated in said article that the city council had data which proved beyond a doubt that a municipal plant in Coeur d'Alene would pay its own way and it would not be necessary to raise one penny of taxes on property to pay off any portion of said bonds. The said statements were designed by the said McEuen to mislead the voters and users of such electricity, when as a matter of fact, the said McEuen knew, or by the exercise of reasonable care and investigation could have ascertained that such statements were untrue and inaccurate.

XV.

All of the erroneous asumptions, statements and representations in the said engineering report of said Wood were either known by said Wood to be contrary to the facts, or could have been so known to him by making

reasonable investigation. All of such assumptions, statements and representations were announced and advertised by various methods of propaganda furnished to the voters of the defendant city by the defendants, the Mayor, City Council and the City Clerk, in a campaign conducted by said officers for approval of said bond issue. The erroneous and misleading report of the said Wood and the announcements and advertisements of the defendants were designed to and actually were representations to the voters of the said city that the sum of $300,000 would be sufficient to construct and equip said plant and distribution system and would impose no tax liability, in excess thereof, upon the taxpayers of the city, and as a matter of fact, said representations were to the effect that there would be no tax liability of any kind upon the taxpayers of the city because the rates of the said municipal plant would itself pay for the said plant, the interest upon the bonds, and leave a surplus in the city treasury.

Plaintiff states that such statements and representations were false and untrue, and when published and advertised were known by the said Wood and by the defendant mayor and members of the city council to be false and untrue, or could have been known to be false and untrue by any reasonable investigation or examination of the facts. That such misleading and erroneous statements and representations were made for the particular purpose of deceiving the voters of said city and to mislead them into consenting to the creation of the

bonded indebtedness of $300,000 and the said misleading and erroneous statements did deceive the voters of said city and did cause them to consent to such bonded indebtedness, believing that they would not be obligated to pay such bond and interest, or any part thereof by taxing the property in said city.

Plaintiff further states that the concealment by the said defendants of their intention not to supply two sections of the city were made for the purpose of deceiving the citizens residing there and inducing them to vote for said bonds and said concealment, as plaintiff is informed and believes and therefore alleges, did deceive the voters in said districts in that respect and caused them to consent to the said indebtedness, believing that they would be supplied, and that such concealment was intentional on the part of the said defendants.

XVI.

The properties and business of the plaintiff will suffer irreparable injury, disruption and damage if it should lose the electric utility business in Coeur d'Alene, Idaho, through the illegal and wrongful acts of the defendants. If the municipal power plant and distribution system is erected, plaintiff will be compelled either to enter into competition and suffer substantial losses in its operations in said city or to abandon entirely its properties and system in said city. If the system should be abandoned, the employees now working for the plaintiff in Coeur d'Alene would necessarily be discharged and a number of other employees engaged by

plaintiff in the maintenance of its transmission lines, the operation of power plants, meter reading and revenue collections, in accounting service and in supervision, would have to be reduced.

The business of plaintiff consists in serving various and divers users in relatively large towns, in smaller villages and communities, in rural districts, in electric service to farms, in pumping water for irrigation, in industrial service and in the operation of mines, mills and smelters. Each class of business lend substantial aid to the plaintiff's ability to carry on the others, and each class is incapable of withdrawal without substantial impairment of plaintiff's ability to serve the others. In this behalf, plaintiff particularly calls attention to the fact that it is now serving a large number of users of electric light and power at their homes and places of business on small tracts adjacent to the City of Coeur d'Alene, and that it will be compelled to continue such service to these users as a public service corporation, and yet the plaintiff can only do this at a great loss and inconvenience and probably a substantial increase in cost to said users, whereas, the defendant city has no authority to engage in the sale of electricity outside the limits of said city, except that the said municipality has the right to sell surplus power outside the city. Plaintiff is advised by counsel and upon such advice and belief alleges that the said defendant city has no power under the law to engage in generating surplus electricity in said city for distribution and sale outside of said city.

XVII.

The plan of the defendant city if consummated with the aid of a gift and loan from the Federal Government, will result in certain and irreparable loss to plaintiff, to its stockholders and bondholders and to its employees, and will result in unemployment of the employees now engaged in its service. Such plan is unsound from an engineering, an economic and a social standpoint. Its sanction, promotion and attempted consummation by public officials is an unlawful abuse of discretion and maladministration of the powers and privileges granted by the National Industrial Recovery Act, and a perversion of the declared purposes and policies of said act.

XVIII.

The application of the defendant city to the Federal Emergency Administration of Public Works had attached to it an engineering report and investigation prepared by the said Franklin P. Wood, of Denver. The said application and the said engineering report were erroneous in many respects.

(1) It is assumed and stated in said report that the cost of the equipment for an adequate and reliable Diesel electric generating plant would not exceed $152,955.73, exclusive of overhead, contractor's profit and the building to house said plant. Said sum of $152,955.73 is inadequate to furnish an adequate Diesel Engine generating plant to supply 80% of the electric light and power load, including 80% of the pumping

load in the City of Coeur d'Alene. To supply 80% of said load, would require the expenditure for Diesel generating plant, exclusive of overhead, contractor's profit and building, the sum of $181,900. The report is unreliable in estimating in one place a load of 80% and in another place a total customer list of 2600 which is in excess of the number of customers of plaintiff in said city at this time, and more than plaintiff has ever had within said city. If a Diesel power plant adequate to serve 2600 customers in said city or to supply the entire city were installed, it would require four Diesel units instead of three and an expense of not less than $230,000 exclusive of overhead, contractor's profit and building to house the same.

(2) It is assumed and stated in said report that an adequate electric distribution system could be built for the service of said city for $102,632.18, exclusive of contractor's profit and overhead.

The report fails to provide for service to two sections of the city, the cost of which is estimated at $16,000. Said sections are described as follows:

(a) The Northwest part of the city, lying west of Government Way and 17th street and north of Linden Avenue;

(b) The northeast part of the city lying between Fifteenth street and Seventeenth street and north of Garden Avenue.

Within the above two districts so omitted and for which service is not provided in the plan, the plaintiff is now serving 155 customers. In addition to the above

two districts, there are other small disconnected areas in said city for which service is not provided in the plan of the city and of the engineer, attached to the said application, and plaintiff is now serving 25 customers therein.

A distribution system of the type proposed in the engineer's report for the city could not be constructed for less than $147,039.00 exclusive of contractor's profit and overhead. A distribution system supplying 80% of the consumers of said city could not be built for less than the sum of $136,588.00 exclusive of contractor's profit and overhead. Taking the contractor's profit, overhead and expenses set up in the report of said engineer Wood, together with a Diesel plant of three units, and with a distribution system providing for service to 80% of the consumers, the cost would exceed the sum of $400,000. An adequate Diesel generating plant for service of the entire city, consisting of four units and a distribution system for the entire city would cost more than the sum of $450,000.

The estimate of cost in said report is not adequate to pay for the necessary and proper equipment for a complete plant. Indicative of the inadequacies of the plan is the proposal to install two 1500-gallon storage tanks which would contain but four days' supply of fuel oil and would not be sufficient into which to unload a railroad tank car.

(3) The estimate of expense of generation assumed and stated in said report is unreasonably low and below

the actual cost necessary to be incurred in the following particulars:

(a) The amount of fuel oil is computed in said report on the basis of guaranteed efficiency of the engines, and not on expected efficiency. The guaranteed efficiency is that efficiency which is obtained by test runs when the machines are new. The expected efficiency is the efficiency which may be expected from the machines over a period of years. The cost of fuel oil is estimated and assumed to be 6c per gallon, whereas, the present cost is 6.91c per gallon.

(b) No adequate provision is made to take care of and supply free porch lights, which is estimated to require 250,000 kilowatt hours per annum.

(4) The report fails to take into proper consideration contingencies of competition, possibilities of higher oil costs, possibility of fire, accidents, injuries and other similar liabilities, and fails to make proper allowance for maintenance and adequate lubricating oil.

(5) The entire report of said Wood, together with the data furnished by him was further confusing, misleading, erroneous and untrue in the following particulars:

In the engineer's report made public prior to the said election, the said Wood stated that it is assumed in his figures that the city would start out with approximately 80% of the business and build it up gradually until it had all of the load. And further stated that the figures

were based on the assumption that 80% of the gross business would go to the city from the start.

In the report of the engineer attached to the application to the Federal Emergency Administration of Public Works, it is stated that in calculating costs it is assumed that the plants were supplying a 100% customer load and for estimated revenues, approximately 75% of the customer load. Any figures based upon a 100% customer load would require, instead of three Diesel units, four of said units of the same rating as proposed by the engineer in order to give reliable and adequate service. Notwithstanding the statement in said application that the operating costs assumed were based upon a 100% customer load, in the operating cost of the power plant, as shown in the report of said Wood attached to the said application, the fuel consumption is based upon 3,500,000 kilowatt hours. The plant maintenance is based upon the same customer load.

The statement in the application to the Federal Emergency Administration of Public Works that in calculating the operating cost it is assumed that the plant is supplying a 100% customer load, is untrue and misleading for the reason that the said figures are based upon the 75% customer load as shown by the estimated operating cost of the power plant in said engineer's report.

XIX.

Plaintiff further alleges that to carry out the said plan and to effectively serve the whole City of Coeur

d'Alene with electric power and light will require an outlay of more than $450,000 and that if the defendant mayor and members of the city council and other officers are permitted to proceed with said plan and permitted to receive from the Federal Government a gift and loan, they will expend the same so far as it will go and when the money is spent, said plant will be uncompleted and inadequate to serve the said city.

XX.

Plaintiff alleges that it is informed and believes and upon such information and belief charges that it is the purpose of the defendants first to construct a plant calculated primarily to serve the business section and the more populous sections of the city, and that it will be unable to extend service throughout the entire city with the funds which it now proposes to borrow from and receive as a gift from the Federal Government, which will leave to the plaintiff the sparsely populated sections of the city wherein the business is unprofitable and where the plaintiff, if it continued to do business in the city, would be unable to serve at reasonable rates without loss to the plaintiff.

Plaintiff further alleges that it furnishes electric power to various irrigation districts and farming areas in Kootenai County and in the vicinity of Coeur d'Alene, and the loss of the business in the City of Coeur d'Alene would seriously impair the plaintiff's ability to continue to serve said uses at the existing rates therefor. That the said city does not pretend that it would under-

take to serve said uses, and as has been hereinbefore set forth, it has no power to serve such uses.

XXI.

In the application of the defendant for such loan and gift, it is not alleged how many men will be employed directly on the work of constructing the electric light and power system, but it is alleged that in the construction of such system and the water system, which is referred to in Ordinance No. 714 hereinbefore referred to, that 160 men will be employed for a period of six months. The total amount, however, to be paid out for labor in said construction amounts to a sum but slightly in excess of $29,000 exclusive of the labor estimated for the power house and pumping plant.

Such application states that after the plant is in operation it will afford employment to more labor than is now employed in service. In the engineer's report, it is alleged that the labor cost of operation will include five men as well as one clerk. In the same report, it is stated that for the operation of the water system allowance should be made for three men, and for clerical help and office supplies, aggregating $2,000 and attention is called to the fact that the clerical and office work could be combined with that of the power plant at considerable saving.

Actually at the present time the plaintiff has employed in the electric light and water service in said city twenty-four employees. Therefore, instead of giving added employment, there will be a reduction in em-

ployment. Under the plan of defendants, not only will the number of employees be reduced, but all of the plaintiff's employees or a large number thereof will be required to be discharged. The labor that will be required under the city's proposal is inconsequential in comparison with the cost of materials.

XXII.

In its release No. 989, dated September 27, 1934, the Federal Emergency Administration of Public Works declared as follows the purposes, policy and practices which it has adopted with respect to applications of municipalities for loans and grants to finance municipal systems:

> "Achievement in certain instances of the administration purpose of making electric energy more widely available at cheaper rates today lead to a clarification of the policy on power by the Public Works Administration.
>
> Municipal or local publicly owner power projects will be aided by PWA only when, in addition to meeting those qualifications necessary for public works projects, they assure electricity to communities at rates substantially lower than otherwise obtainable under the unchanged basic policy enunciated by Public Works Administrator Ickes.
>
> The statement of Administrator Ickes followed action by some privately owned utilities, which on reexamination of their condition, found it possible

to reduce rates to a point below those proposed by municipal project plants.

In all allotments made for municipal power plants by the Public Works Administration proposed rates have been well below existing private company rates. Consequently, the fact that the companies in some instances have met these proposed municipal rates has been deemed as showing progress toward one of the aims of this phase of the public works program.

In the cases affected Public Works Administration policy will be so administered that municipal plant construction will not be deprived of the possibility of public works support until such time as the local Government feels assured the proposed rate reduction by the existing utility will be in effect on a reasonably permanent basis.

Since the public works program began financing electric plants, where they are socially desirable and where they will be self-liquidating, there have been reductions of rates by private utilities in different localities. The private utilities are becoming increasingly cognizant of the greater use of power resulting from lower rates.

Administrator Ickes said:

'PWA has endeavored to make electric energy more broadly available to cheaper rates by acting on applications of municipalities for loans and

grants to finance municipal systems where reasonable security is offered and the project is socially desirable. They are deemed desirable where the loan can be amortized in a reasonable period while charging rates substantially lower than those of the existing utility.

'However, we make it a practice before approving the loan to give the company an opportunity to put in effect rates at least as low as those at which the municipal system will be self liquidating. Several utility companies have accepted this opportunity. It is obvious that in such cases it is advantageous to the city and to PWA that the offer be accepted and the applications withdrawn. To make loans and grants to finance projects where the competitor offers rates which are lower than those possible by the city plant, would duplicate facilities without any social betterment and impose on the city a burden which it probably could not meet without resort to taxation.

'Furthermore, in the described situation Public Works will be free to use its funds to better advantage elsewhere. The action of the utility companies referred to supports the belief that domestic rates, in certain instances at least, are so high as to be disadvantageous to the company as well as unjust to the consumers. Experience shows that lower rates may produce larger profits, particularly where promotional campaigns are conducted and

the cost of electrical appliances is made reasonable.

'PWA will cooperate with cities to prevent rates rising on an indication municipal plants may not be built. PWA will not rescind allotments or suggest the withdrawal of applications until the lowered rates are legally in effect.

'State laws authorize municipal competition, hence it is PWA's position that the State has determined that such competition may be socially desirable. We believe it is for the municipal applicant to determine whether or not it desires to compete with privately owned utilities. It is our policy to consider such applications particularly where franchises are soon to expire, provided the project is self-liquidating at rates lower than those which the existing utility is willing to put into effect.' "

The loan and grant for which application has been made to the Federal Emergency Administration of Public Works by the said City of Coeur d'Alene could not have been approved by the said Federal Emergency Administration of Public Works upon the theory that it is to be made "with a view to increasing employment quickly," for the foregoing release states that the purpose of the Public Works Administration in acting favorably on applications of municipalities for loans and grants to finance municipal systems is to make electricity more broadly available at cheaper rates. One of the policies announced in said release, to-wit, that the Public Works Administration will make it a practice

before approving any such municipal loan to give the public utility company an opportunity to put into effect rates at least as low as those at which the municipal system will be self-liquidating, has not been given effect with respect to said application of the City of Coeur d'Alene, obviously because the City of Coeur d'Alene did not contemplate at the time its application for said loan and grant was made putting into effect in said City of Coeur d'Alene rates for electric service lower than those now being charged in said City of Coeur d'Alene by the plaintiff.

Plaintiff alleges that the said City of Coeur d'Alene cannot construct a Diesel engine electric generating plant and distribution system for said city as proposed in its application and reduce rates below the rates now charged by plaintiff and make the same self-liquidating.

Plaintiff alleges that on November 7, 1934, Frank T. Post, president of plaintiff, sent a telegram to Hon. Harold L. Ickes, Public Works Administrator, in words and figures as follows:

Spokane, Washington
November 7, 1934

"Hon. Harold L. Ickes
Public Works Administrator
Washington, D. C.

Congressman White of Idaho has recently stated publicly that Public Works Administration has ap-

proved application City Coeur d'Alene Idaho for loan and grant to be used for construction Diesel engine Electric generating plant and distribution system in competition with our efficient hydro system stop Feel sure this application has not been called to your attention because its approval would violate statement of principles contained in Public Works Administration press release number nine eighty nine dated September twenty seventh nineteen thirty four stop Our present rates in Coeur d'Alene are among the lowest in the United States and regulated by Idaho Public Utilities Commission Stop Application of the City of Coeur d'Alene for loan and grant which we had an opportunity to answer does not contain any schedule of rates which city proposes to put in force if PWA shall loan and give it money with which to build a system to operate in competition with our company therein stop We have never seen any schedule of rates proposed by the city and it is impossible for the city to make this proposed project self-liquidating under schedules of rates lower than ours Stop Construction of Diesel engine plant in Coeur d'Alene at this time would seem to violate all the principles contained in your press release and in other releases of the PWA not only because of the situation outlined above but also because there is at the present time in this territory a large surplus of hydro generated electrical energy which will be greatly augmented by the Government through the Grand Coulee de-

velopment Stop Feel sure you have no intention to depart from previously announced policies and that Coeur d'Alene application will not be granted Stop Shall greatly appreciate assurance that this situation will be given your personal attention and I will esteem it a privilege to have the opportunity of a personal interview and discussion of whole problem with you.

F. T. Post, President
The Washington Water Power Company

In reply thereto, Mr. Ickes sent the following telegram:

"Postal Telegraph

C 47 58 GOVT WASHINGTON DC NOVEMBER 12
F T POST
PRESIDENT THE WASHINGTON WATER POWER CO SPOKANE WASH RETEL SEVENTH DOCKET 6695 COEUR DALENE CITYS PROPOSED ELECTRIC RATES CONTEMPLATE TWENTY PERCENT REDUCTION STOP PROPOSED WATER DEEMED BETTER QUALITY THAN YOURS STOP YOU HAVE ALREADY HAD OPPORTUNITY MEET CITYS PROPOSALS HOWEVER IF YOUR COMPANY PLACES IN EFFECT RATE REDUCTION EQUAL OR GREAT-

ER THAN THAT OF CITY ELECTRIC POWER BOARD OF REVIEW WILL CONSIDER MATTER FURTHER

HAROLD L ICKES ADMINISTRATOR"

On November 15, Mr. Post replied to Mr. Ickes as follows:

"POSTAL TELEGRAPH

SPOKANE WASHINGTON
NOVEMBER 15, 1934

HON HAROLD L ICKES
PUBLIC WORKS ADMINISTRATOR
WASHINGTON D C

RE TEL TWELFTH DOCKET SIX SIX NINE FIVE COEUR DALENE IN THE CAMPAIGN BEFORE THE ELECTION AUTHORIZING BOND ISSUE IT WAS NOT ASSERTED BY THE CITY OFFICIALS OR OTHER PROPONENT THAT IF THE CITY SHOULD BE AUTHORIZED TO GO INTO THE ELECTRIC BUSINESS THERE WOULD BE ANY LOWERING OF RATES STOP IT MAY SEEM STRANGE TO YOU BUT THE FACT IS THAT CITY OFFICIALS OF COEUR DALENE AT A MEETING WITH THE PUBLIC UTILITIES COMMISSION OF

IDAHO STATED TO THAT COMMISSION IN MY PRESENCE THAT THEY WERE NOT INTERESTED IN ANY REDUCTION IN ELECTRIC RATES BUT ONLY IN MUNICIPAL OWNERSHIP STOP THE ORIGINAL PAPERS FILED BY COEUR DALENE WITH YOUR DEPARTMENT FOR A LOAN AND GRANT DID NOT CONTAIN ANY OFFER OR PROPOSAL THAT THERE WOULD FOLLOW ANY REDUCTION IN ELECTRIC RATES STOP WE WERE GIVEN A COPY OF THIS APPLICATION AND ANSWERED IT IN ACCORDANCE WITH ITS TERMS STOP SEVERAL WEEKS AFTER THE IDAHO LOCAL BOARD HAD MADE A REPORT TO WASHINGTON MISTER COE THE MAYOR OF COEUR D'ALENE WENT TO WASHINGTON AND HAD A CONFERENCE WITH SOMEONE UNKNOWN TO US STOP WE ARE NOT ADVISED AS TO WHAT HE SAID AND WE HAVE NO COPY OF ANY DOCUMENT OR PAPER IF ANY FILED BY HIM STOP YESTERDAY WE COMMUNICATED WITH MAYOR COE AND HE SAYS THAT HE FILED NO WRITING ON THAT SUBJECT AND THAT HE DID HAVE SOME CONVERSATION WITH SOME PARTY

WHOSE NAME HE REFUSES TO GIVE US AND THAT WHAT WAS SAID ABOUT REDUCTION OF RATES HE STATES HE DOES NOT REMEMBER STOP MAYOR COE HAD NO AUTHORITY FROM THE CITY GOVERNMENT TO MAKE ANY REPRESENTATION OR PROPOSAL ON THAT SUBJECT STOP WE THINK IT IS ONLY FAIR THAT WE SHOULD HAVE A COPY OF ANY WRITING OR MEMORANDUM IF ANY NOW IN THIS FILE WHICH RELATES TO ANY SUGGESTION OR PROPOSAL FOR A REDUCTION IN RATES STOP AS PERTINENT TO THIS SUBJECT WE FURTHER SUGGEST THE FOLLOWING FACTS NAMELY OF THE GROSS ELECTRIC REVENUE RECEIVED BY OUR COMPANY FROM ELECTRIC SERVICE RENDERED IN THE STATE OF IDAHO OVER EIGHTEEN PERCENT IS PAID BACK TO THE PEOPLE IN THE FORM OF FEDERAL STATE COUNTY CITY AND OTHER TAXES STOP THE MUNICIPALISTS DO NOT PROPOSE TO PAY ANY TAXES TO THE FEDERAL GOVERNMENT NOR ANY STATE COUNTY OR SCHOOL DISTRICT TAXES OR ANY MONEYS IN LIEU THEREOF STOP WHAT THEY MAY DO IN THE

MATTER OF CITY BOOKKEEPING IN THE WAY OF SHIFTING FROM ONE FUND TO ANOTHER IS PURELY A MATTER OF SPECULATION STOP THE PROPOSED MUNICIPAL PLANT DOES NOT COVER THE ENTIRE CITY BUT DELIBERATELY OMITS NOT ONLY A PORTION THEREOF WITHIN THE CITY LIMITS BUT ALSO A PORTION THEREOF JUST OUTSIDE, OF THE CITY LIMITS IN WHICH SECTIONS WE HAVE OVER THREE HUNDRED ELECTRIC CUSTOMERS STOP IN OTHER WORDS THE MUNICIPALISTS SEEK TO CORRAL THE BEST PART OF THE BUSINESS AND LEAVE THE POOREST PART TO THIS COMPANY STOP EVEN THIS PROPOSED PLANT CANNOT BE BUILT WITH THE AMOUNT OF MONEY ASKED FOR AND TO CREATE A PLANT OR SYSTEM WHICH WOULD COVER THE ENTIRE TERRITORY WOULD MATERIALLY INCREASE THE SHORTAGE STOP THIS SECTION OF THE NORTHWEST HAS BEEN WIDELY ADVERTISED FOR ITS WATER POWER DEVELOPMENTS AND POTENTIAL DEVELOPMENTS STOP THIS COMPANY HAS SIX HYDR PLANTS ON THE SPOKANE RIV-

ER ONE OF THEM BEING ONLY TEN MILES FROM COEUR DALENE STOP THE FEDERAL GOVERNMENT IS SPENDING MANY MILLIONS IN DEVELOPING TWO HYDR PLANTS IN THE COLUMBIA RIVER STOP THE CONTRACTORS FOR THE GRAND COULEE DAM WHO CERTAINLY KNOW THEIR BUSINESS HAVE BUILT A TRANSMISSION LINE FROM THE DAM SITE TO COULEE CITY AND ENTERED INTO A FIRM CONTRACT WITH THIS COMPANY FOR ALL OF THE ELECTRIC POWER NEEDED IN THAT ENTERPRISE STOP THERE CAN BE NO DOUBT THAT THESE CONTRACTORS KNOW ALL ABOUT DIESEL ENGINE PLANTS STOP THAT UNDER THESE CIRCUMSTANCES A BUREAU OR BOARD OF THE FEDERAL GOVERNMENT SHOULD SERIOUSLY CONSIDER A PROPOSAL TO FINANCE AND SUBSIDIZE A DIESEL ENGINE ELECTRIC SYSTEM IN COEUR DALENE IS MOST SURPRISING STOP THE RATES OF OUR COMPANY PREVAILING IN THIS SECTION ARE AMONG THE LOWEST IN THE UNITED STATES AND WERE SO DETERMINED BY INVESTIGATORS FOR THE

FEDERAL TRADE COMMISSION STOP PURSUANT TO ORDER OF DEPARTMENT OF PUBLIC WORKS OF THE STATE OF WASHINGTON THIS COMPANY HAS BEEN DILIGENTLY ENGAGED FOR SEVERAL MONTHS IN MAKING A COMPLETE DETAILED INVENTORY OF ALL OF ITS PROPERTY IN THE STATES OF WASHINGTON AND IDAHO STOP THIS INVENTORY IS NOW COMPLETED AND IS BEING CHECKED BY ENGINEERS AND OTHER EMPLOYEES OF SAID DEPARTMENT STOP IN THE NEAR FUTURE A TRIAL OR HEARING WILL BE HAD BEFORE SAID DEPARTMENT IN WHICH WE EXPECT THE PUBLIC UTILITIES COMMISSION OF IDAHO WILL PARTICIPATE TO DETERMINE THE FAIR VALUE OF ALL OF THE ELECTRIC PROPERTY OF THIS COMPANY AND ALSO TO DETERMINE THE REASONABLENESS OF ALL RATE SCHEDULES STOP THE RATE SCHEDULES IN EACH STATE FOR COMPARABLE CITIES TOWNS AND COMMUNITIES AND FOR AGRICULTURAL SERVICE MUST OF NECESSITY BE SUBSTANTIALLY THE SAME STOP OUR COMPANY IS CONTROLLED BY

STATE LAWS AND BY ADMINISTRATIVE AND JUDICIAL BODIES CREATED BY STATE LEGISLATURES STOP THE LAW PROVIDES THAT ITS RATES SHALL BE FAIR JUST REASONABLE ADEQUATE AND NON DISCRIMINATORY AND THERE ARE SEVERE PENALTIES FOR VIOLATIONS THEREOF STOP OUR COMPANY OF COURSE CANNOT MAKE ANY BINDING CONTRACTS WHICH MIGHT ATTEMPT TO OVERRIDE OR USURP THE FUNCTIONS OF STATE REGULATORY BODIES STOP WE ARE ADVISED BY OUR LAWYERS THAT THE PUBLIC WORKS ADMINISTRATOR HAS NO POWER OR AUTHORITY UNDER THE LAW TO MAKE ANY LOAN OR GRANT TO COEUR DALENE FOR THE PURPOSE OF CONSTRUCTING A DIESEL ENGINE ELECTRIC SYSTEM STOP WE MAKE THIS STATEMENT FOR THE PURPOSE OF NOT WAIVING THIS POINT IN ANY LITIGATION THAT MAY ENSUE HEREAFTER IF THERE SHOULD BE ANY SUCH LITIGATION STOP AS TO THE CONTENTION IN THE MATTER OF THE WATER SYSTEM THAT THE PROPOSED WATER IS DEEMED OF

BETTER QUALITY THAN THE WATER THAT IS FURNISHED BY US FROM THAT GREAT AND BEAUTIFUL LAKE WE BEG TO STATE THAT THE RECORD IN YOUR FILES WILL SHOW THAT THE PROPONENTS DO NOT KNOW WHERE THEY CAN GET THIS BETTER QUALITY OF WATER STOP THE SUGGESTION SEEMS TO BE THAT THEY MAY SINK ONE OR SEVERAL WELLS BUT HOW MANY AND WHERE AND THE QUANTITY AND QUALITY OF WATER OBTAINED THEREFROM IS PURELY SPECULATIVE STOP THE WATER FROM THE LAKE FURNISHED BY OUR COMPANY HAS BEEN HELD TO BE WHOLESOME AND POTABLE IN ACCORDANCE WITH THE STANDARDS OF THE UNITED STATES BUREAU OF HEALTH STOP PERMIT ME TO POINT OUT IN CONCLUSION THAT IF THE CITY OF COEUR DALENE SHOULD CONSTRUCT AND OPERATE THE PROPOSED SYSTEMS IN COMPETITION WITH OUR COMPANY THE INEVITABLE RESULT WILL BE THAT EACH SYSTEM WILL LOSE MONEY AND THAT THE CITY OF COEUR DALENE NOW IN A PRECARIOUS

FINANCIAL SITUATION WILL BECOME BANKRUPT
F T POST PRESIDENT
THE WASHINGTON WATER POWER COMPANY"

FTP-W
POSTAL
CHG WWP CO

On November 17, the following telegram was addressed to Mr. Post:

"WESTERN UNION
SKI 13 GOVT F WASHINGTON D C 149P
NOV 17 1934

F T POST PRES THE WASHINGTON WATER POWER CO

RETEL ADDRESSED ICKES WILL CONSIDER POINTS AND WILL ADVISE CITY OFFICIALS OUR CONCLUSIONS

H T HUNT

CHAIRMAN ELECTRIC POWER BOARD REVIEW FOR THE ADM."

On November 20, 1934, plaintiff commenced this action.

On November 20, 1934, the City of Coeur d'Alene received from the Federal Emergency Administration of Public Works at Washington, D. C., a proposed

contract for execution by the city.

Thereafter and on the 23rd day of November, an ordinance was passed and adopted by the city council, approved by the mayor and on the same day published, approving the loan and grant agreement between the city of Coeur d'Alene, and the United States and authorizing and directing its execution and transmission to the Federal Emergency Administration of Public Works, further authorizing the mayor and city clerk to consent to modifications or changes therein and to execute further agreements found desirable in connection therewith. Said agreement referred to provided for a loan and grant not exceeding $650,000 for the financing of a water system and Diesel engine generating plant and an electric distribution system. A copy of said ordinance is attached hereto marked "Exhibit C" and made a part hereof.

The proposed contract and agreement was thereupon executed by the mayor and city clerk of the City of Coeur d'Alene with a slight modification referring to the commencement of this action. A copy of said agreement as executed is attached hereto, marked "Exhibit D" and made a part hereof.

Thereafter and on the 24th day of November, 1934, the plaintiff received from the officers of the defendant city a copy of a letter to the defendant mayor from the Federal Emergency Administration of Public Works, Electric Power Board of Review, which is in words and figures as follows:

"FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS
ELECTRIC POWER BOARD OF REVIEW
Washington, D. C.
November 21, 1934

AIR MAIL
Honorable John Knox Coe,
Mayor
Coeur d'Alene, Idaho

Dear Mr. Mayor:

I have today sent to you the following telegram:

'REDOCKET SIXTYSIX NINETY-FIVE RATE ORDINANCE REQUIRED AS CONDITION OF LOAN SHOULD FIX RATES APPROXIMATELY TWENTY PER CENT BELOW EXISTING RATES STOP AIRMAIL LETTER FOLLOWS.'

The ordinance should state that the rates therein will be made available by the municipal plant and will not be increased unless and until it is proved to the satisfaction of the Administrator that the said rates are insufficient to provide for operating expenses, necessary improvements and extensions, and so much of the debt service as is represented by the proportion which the cost of the electric system bears to the cost of the entire project. It should provide also that the charges to the City itself for

street lighting and other municipal services shall not exceed the rates for such service now provided by schedules of the Washington Water Power Company until it shall be ascertained that such rates are less than the cost of service to the City. The ordinance should recite that the agreement of the City to maintain such rates and charges as aforesaid is in further consideration of the grant from the Government and is for the benefit of the electric consumers and taxpayers of the city.

It will be necessary that the ordinance be approved by the Administrator. This can be done either before or after its adoption.

Very truly yours,
Henry T. Hunt
Per O.M.R.
Henry T. Hunt
Chairman
For the Administrator."

Plaintiff further alleges that the statements contained in said telegrams of Frank T. Post, President of the plaintiff, are accurate and true.

Plaintiff further alleges that the approval of the application of the City of Coeur d'Alene and the making of said loan and grant or gift by the Federal Emergency Administration of Public Works is not made for the purpose of relieving unemployment and the relief of unemployment will not be accomplished to any extent at all thereby, but the sole and only purpose or purposes

thereof are unlawful and in violation of the National Industrial Recovery Act and in violation of the Tenth Amendment, of the Fifth Amendment and of the First section of the Fourteenth Amendment to the Constitution of the United States, such purpose or purposes being:

(1) The destruction of the property of the plaintiff because of its failure or refusal to accede to the demand of the Federal Emergency Administration of Public Works to usurp the exclusive power and function of the State of Idaho to fix and regulate the rates, charges and service of the plaintiff as a public service corporation engaged in intrastate business in that state, and to substitute coercion by an agency of the Federal Government as to such rates, charges and services in place of the lawful and orderly regulation thereof by the state regulatory body which has full, complete and ample authority in relation thereto.

(2) To foster and encourage public ownership and political operation of electric light and power systems whether they may or may not be engaged in interstate commerce.

(3) To usurp and/or override the police powers of the State of Idaho in the following additional respect, to-wit, the State of Idaho has exclusive power to provide the method of regulation of rates charged by municipally owned public utilities and the attempt of the Public Works Administrator in said contract to fix or regulate the rates to be charged by the City of Coeur

Nd'Alene, or to control the modification thereof in the future is violative of the Tenth Amendment to the Federal Constitution.

XXIII.

Plaintiff states that the actions and proceedings already taken in pursuance of the plan hereinbefore described and the threatened actions and proceedings which defendants are about to take under such plan are unlawful and invalid for the following reasons:

(1) Because the misleading, erroneous and false statements, advertisements and information put out by the mayor and members of the city council of the defendant city, and in the report of said engineer to the effect that the bond issue of $300,000 would result in no requirement for the payment of any sum, either principal or interest, through taxation, was such a fraud against the voters that it vitiated the election and renders said bonds illegal and unlawful.

(2) Because the misleading, erroneous statements, advertisements and information put out by the mayor and members of the city council of the defendant city in concealing from the citizens and voters that two sections of the city under the plan proposed would not be included within the area to be served by said proposed municipal light and power system, was such a fraud against the voters that it vitiates the election and renders the bond illegal and unlawful.

(3) Because it is provided by Section 3 of Article

VIII of the Constitution of Idaho:

> "No 'city' or other subdivision of the state shall incur any indebtedness, or liability in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years of the time of contracting the same."

Said section further provides, "any indebtedness or liability incurred contrary to this provision shall be void."

The plan and scheme of the defendants provides for the creation of an indebtedness and/or liability in excess of $300,000 for said plant and distribution system within the meaning and restriction of said Section 3 of Article VIII of the Idaho Constitution.

(4) That the said Ordinance No. 723 (Exhibit C attached to this Amended Bill of Complaint) and the said proposed loan and grant agreement (Exhibit D) provide for one project, to-wit, a project for financing the construction of a water system, including sinking wells, installing pumps, and a distribution system for water service, also a Diesel engine generating plant and an electric distribution system, under which the said de-

fendant city and its officers propose to borrow or receive from the United States in the aggregate the sum of $650,000.

That the said ordinance and said agreement are violative of Ordinance No. 713, calling for an election for the purpose of submitting the proposition of incurring an indebtedness of $300,000 by the issuance of municipal bonds for the purpose of paying the costs and expenses of the acquisition by purchase or construction of a light and power plant and distribution system for said city. That there has never been submitted to the voters of said city a proposal for the incurring of an indebtedness such as proposed in said Ordinance No. 723 or in said proposed agreement, Exhibit D.

(5) Because the National Industrial Recovery Act does not authorize or purport to authorize the Federal Emergency Administration of Public Works to loan moneys or give moneys of the Federal Government for the building or municipal Diesel engine power generating plants and electric distribution systems. While such act does authorize the making of loans and gifts of money for the building of certain named and specified public works, none of the enumerated public works are of the character applied for by the City of Coeur d'Alene.

(6) Because the National Industrial Recovery Act by particularly enumerating "Development of Water Power" and "transmission of electric energy" in the list of public works for which public moneys might be loan-

ed and/or granted, must be held to have excluded from the project included in said act such purported Diesel engine generating plant and electric distribution system as is proposed by the City of Coeur d'Alene, in its said application.

(7) Because the National Industrial Recovery Act since it does not expressly include in the enumeration of public works which might be constructed with loans and gifts of public moneys, municipal Diesel engine electric generating plants and distribution systems, cannot be held to have that meaning by the implication in view of the fact that the building of such competing municipal electric generating plants and distribution systems will result in vast destruction of investments, in creating unemployment rather than reducing and relieving it, has no relation whatever to interstate or foreign commerce, will do nothing to improve standards of labor, increase purchasing power; will not eliminate unfair competitive practices, but will tend to promote unfair competition, and will not promote or tend to promote the fullest possible utilization of the present productive capacity of industries, but rather to render useless part of the present productive capacity of the plaintiff and similar industries; nor will it otherwise promote any of the purposes set forth in the declaration of the policy of Congress contained in Section 1 of said act.

(8) Because the plan and scheme of creating an obligation of the defendant city for the proposed municipal electric plant is violative of the limitations of municipal

indebtedness imposed by Section 3 of Article VIII of the Constitution of Idaho, and subdivision (d) of Section 203 of the National Industrial Recovery Act, providing:

> "The President in his discretion and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county or municipality, notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county or municipality to borrow money or incur indebtedness,"

cannot be held to repeal, nullify or abrogate the Constitution or laws of the State of Idaho. Such provision of the act of congress is violative of the Tenth Amendment to the Constitution of the United States in that it purports to authorize an unlawful invasion of power reserved to the state and not delegated to the United States.

(9) Because the defendant city is not now engaged in nor does it propose to engage in interstate commerce or in any business or activity interstate in character. The electrical utility business which it proposes to create by the said power plant and distribution system is wholly within the County of Kootenai, State of Idaho, and is entirely local and intrastate in character. No emergency exists which authorizes or justifies the making of the loan and gift by the Federal Emergency Administration of Public Works to the defendant city and/or the construction of the proposed municipal elec-

tric power plant and distribution system. In view of such facts and other facts herein stated, such proposed loan and gift are violative of the policy of the National Industrial Recovery Act.

(10) Because the proposed loan and gift by the Federal Emergency Administration of Public Works to the city would be illegal for the reasons herein specified, and the city would, therefore, be required to refund and repay to the Federal government not only the amount of the loan at such time as the Federal government should elect and irrespective of the maturity of the bonds issued by the city, but would also be required to refund to the Federal government the gift or grant so made to the city by the Federal Emergency Administration of Public Works. By reason of the invalidity of the proposed loan and gift or grant, the city would thereby become indebted in an amount in excess of that authorized by Section 3 of Article VIII of the Constitution of the State of Idaho, and the defendants by their acts are attempting to incur an indebtedness and create a liability exceeding the annual income and revenue of said city for such year without the assent of two-thirds of the qualified electors voting at an election held for that purpose.

(11) Because the issuance of the proposed bonds by the city and the use and application of the proceeds thereof and of the proposed gift or grant of the Federal Emergency Administration of Public Works for the reasons in this complaint stated are violative of the

Fifth Amendment and of Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives this plaintiff of its property without due process of law.

(12) Because under the Constitution of the United States Congress has no power to make a loan and gift or grant of public moneys of the United States to the City of Coeur d'Alene, for the purpose of constructing a municipal electric plant, the effect of which is to duplicate and destroy the value of existing adequate facilities for the same purpose and the making of such loan and gift or grant is, therefore, prohibited by the Constitution of the United States, and particularly by the Fifth Amendment and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(13) Because no unusual emergency has arisen which necessitates the making of a loan and gift by the Federal Emergency Administration of Public Works for the construction of a municipal electric plant and system at Coeur d'Alene. The conditions with respect to the rendition of electric service at Coeur d'Alene are now the same as they have been for a number of years in the past, except that substantially lower rates for such service have been made effective in recent years and material improvement made in the plant and service. Plaintiff is adequately supplying all demand for electric service in the city. The effect of such loan and gift will directly decrease instead of promote the fullest possible utilization of the present productive capacity

of the electrical industry and particularly that portion of the industry carried on by the plaintiff.

The construction of a municipal electric system will merely constitute an unneeded and wasteful duplication of systems and facilities resulting in a division of business and revenues between the plaintiff and said city with no corresponding decrease in fixed charges and costs of service and ultimately making it impossible for either utility to continue to operate on a sound economic basis and serve the public.

The making of a loan and gift to the defendant city for the building of a duplicate system under the existing facts, therefore, cannot be warranted under any invocation of emergency power of the Federal government, whereby the reserved power of the states is usurped, and the exercise of such claimed power is violative of the Tenth Amendment of the Federal Constitution.

(14) The action of the Federal Administrator of Public Works in including the project involved herein among those to be financed with funds of the United States under the National Industrial Recovery Act is illegal, and invalid for the reason that even if congress has the power to appropriate moneys and to authorize the Administrator of Public Works to expend the same by loans or by gifts or grants for certain specified purposes named in the act of congress, without allocation therefor by congress for any particular enterprise or class of enterprises, still, it would be unlawful delegation of congressional legislative powers to the Pres-

ident of the United States or to the Administrator of Public Works to authorize them, or either of them, to spend that money for any purpose which they, or either of them, may think would be for the good of the country or for the general welfare of the United States. If, under said act, therefore, the said Administrator of Public Works may distribute money for "development of water power" and/or "transmission of electrical energy," such administrator cannot distribute money for building a Diesel engine generating plant, and if any such power is exercised or attempted to be exercised under Section 202 of the National Industrial Recovery Act, on the theory that the same is granted under the authority to prepare a comprehensive plan of public works, "which shall include among other things the following," and the same are not included therein, such grant of power would be invalid and an unlawful delegation of congressional legislative power and contrary to the Constitution of the United States.

(15) Said project for which such disbursements of public funds of the United States is threatened is entirely local for the exclusive benefit of the users of electricity in and about the City of Coeur d'Alene, Idaho, alone, and is and can be of no general benefit to the nation as a whole or tend to provide for or affect the general welfare of the United States.

(16) Said project does not constitute any public use or any object or purpose affecting or in aid of providing for the general welfare of the United States, in

that the sole and only recipients and beneficiaries of said expediture are and will be the individual consumers of electricity in and about the City of Coeur d'Alene, who are already being adequately served and supplied by private capital and enterprise, and the private firms, corporations and individuals engaged in the manufacture, sale, assembly and installation of the materials and appliances consisting of wires, cables, conduits, poles, supports, transformers, switches and other articles constituting and composing said electric distributing system. That if any secondary or incidental benefit might result from the stimulation of the manufacture, sale, assembly and installation of such articles, the same would be merely an incidental benefit, remote and contingent, depending upon the immediate actions, conduct and operations of such manufacturers and sellers of such articles of equipment and contractors and builders for their installation and the expenditure of funds for such purpose would constitute merely a disbursement and expediture for the private gain and profit of such manufacturers, producers and sellers and contractors and builders engaged in assembly and erection of such system.

(17) The provisions of Sections 202 and 203 of Title II of the National Industrial Recovery Act are invalid as constituting an unlawful delegation of congressional legislative powers to the President of the United States and an unlawful delegation of such power to the Administrator of Public Works, contrary to the Constitution of the United States.

(18) Congress has no power to appropriate moneys to the President or to any administrative bureau or board to be expended for any project except as specifically mentioned and described in the act appropriating such money, or some other act of congress. To delegate to the president or to the Public Works Administrator the power to loan or grant such, or any, appropriated moneys for the building or purchase by cities of any Diesel engine electric light plant or system as might meet with the approval of the President or the Public Works Administrator, and in his or their sole discretion, would be an unlawful and invalid delegation of power.

(19) The action of the Federal Administrator of Public Works in including the project involved herein among those to be financed with funds of the United States under the provisions of Sections 202 and 203 of the National Industrial Recovery Act is an arbitrary, unreasonable and capricious exercise of delegated authority, in that the construction of a Diesel engine electric generating plant and a distribution system in the City of Coeur d'Alene and the disbursement of public funds of the United States for such purpose does not and will not accomplish or tend to accomplish any of the purposes or objects of the said National Industrial Recovery Act in that it does not tend "to eliminate unfair competitive practices" but to increase and promote such unfair competitive practices nor to "promote the fullest possible utilization of the present production capacity of industry," but rather to discard and render useless much of the productive capacity of plaintiff and

similar industries; it does not increase or tend to increase employment but on the contrary tends to reduce employment by curtailing the business and operations of plaintiff, necessitating the permanent discharge of many of plaintiff's employees.

(20) The action of the Federal Administrator of Public Works in including the project involved herein among those to be financed with funds of the United States under the National Industrial Recovery Act is an arbitrary, unreasonable and capricious exercise of delegated authority for the reason that the financial condition of the City of Coeur d'Alene, is so unsound that repayment of said loan is not reasonably secured and such condition was so obvious and so well known to said Administrator that his action in approving and making said loan was in utter disregard of the provisions of Section 203 of said act.

(21) Said project and threatened disbursements of public funds from the United States and use of such funds in furtherance of said project are and will be illegal, unlawful and in violation of the Tenth Amendment to the Constitution of the United States on account of the following facts and for the following reasons, to-wit:

The Federal Public Works Administrator, Harold L. Ickes, has publicly announced a controlling policy and put such policy into effect and operation as a rule of administration, of invading and interfering with the reserved powers of the states, in this instance, the State

of Idaho, and particularly its police powers to regulate foster and protect and preserve public utilities within its borders and to regulate the rates and service of public utilities including plaintiff. Irrespective of such announced policy, the vesting in said Ickes of the delegated legislative power involved herein would make it possible for him to pursue such a policy. No such power was delegated to Ickes by any act of congress and any attempted delegation of such power would be beyond the power of Congress.

The matter of exposing privately owned public utilities, including the plaintiff, to ruinous competition or protecting them from such competition to the end that they may survive and be ready, able and willing to afford public utility service to the cities, towns, villages and rural communities and for mining, irrigation, industrial and other public and beneficial uses throughout the state which may not now or hereafter be objects of Federal bounty and aid; and the matter of fostering and protecting such privately owned utilities so that they may establish financial credit and encourage the investment of private capital in their business and properties to the end that such utilities may expand and extend their services with the growth and development of the private domestic and industrial needs therefor, independently of the necessity of financing by public bonds issued and disbursements of public funds, and all matters reserved to the several states, including the State of Idaho, under the Tenth Amendment to the Constitution of the United States, and are subjects to

be determined, regulated and supervised under the sovereign police powers of the state which cannot be surrendered or delegated to the United States or any of its administrative agencies or officers.

The matter of regulating the rates for service and the quality, character and extent of utility service are likewise matters, the control of which is reserved to the respective states and the power of control of which cannot be surrendered or delegated by the states.

Nevertheless, said Ickes has publicly announced and put into effect, and irrespective of such public announcement, would if the transactions herein complained of be deemed lawful, be able to put into effect according to his uncontrolled, arbitrary and capricious determination, a policy of granting or withholding the grant of public funds of the United States for use in establishing utility plants in ruinous competition with existing privately financed plants dependent upon whether or not such privately financed plants comply with his wishes with reference to their operations and the regulation of their rates. Said Ickes accordingly by such claimed discretionary power of granting or withholding grants of national public funds for such projects is and would be enabled to bring the entire regulation of intrastate public utilities under his control and domination.

(22) Said loan and grant of public funds of the United States are in excess of and outside the scope of the National Industrial Recovery Act in that they

constitute merely the financing by the Federal government of a purely local and proprietary business.

XXIV.

Plaintiff has no adequate remedy at law to protect its rights as a taxpayer, as a franchise holder and as the owner of the electric utility business now being operated by it in the City of Coeur d'Alene, or its operating rights and privileges to conduct said electric utility business in the City of Coeur d'Alene against unlawful competition by the defendant city, and unless the defendant city and other defendants constituting its officials are enjoined from creating the unlawful, invalid and unconstitutional obligations and indebtedness provided by the plan and scheme herein described and from constructing, maintaining and operating the proposed municipal electric plant under such plan and scheme, the plaintiff will be irreparably damaged.

XXV.

That the defendant city and the defendant city officials propose and threaten to enter into a contract with the Federal Emergency Administration of Public Works, hereinbefore referred to, and to issue and deliver bonds of the defendant city. That unless the defendants and each of them is immediately restrained from so doing, they will enter into said contract and deliver said bonds and receive funds from the said Federal Emergency Administration of Public Works to the irreparable damage of the plaintiff, whereas, the re-

straint of the doing thereof until this cause is determined would result in no detriment or injury to the defendant.

WHEREFORE, plaintiff prays:

(1) That the City of Coeur d'Alene, Idaho, and the defendants, J. K. Coe, Mayor, A. Grantham, Treasurer, William T. Reed, Clerk, Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, members of the City Council of said City of Coeur d'Alene, Idaho, and Harold L. Ickes as Federal Emergency Administrator of Public Works, their assistants, agents, employees, attorneys and all persons acting through or under them, or any of them, be forever restrained and enjoined from the issuance, pledge, sale or delivery of any of the bonds of said city which are purported to be authorized by Ordinance No. 713 of said city, and from procuring, accepting, using or applying any moneys, the proceeds of any loan or gift or grant from the Federal Emergency Administration of Public Works for the building of a municipal electric power and distribution system in accordance with the application of the city to the said Federal Emergency Administration of Public Works, made on or about the 14th day of December, 1933.

(2) That the defendant city and the defendant officers, their assistants, agents, employees, attorneys and all persons acting through or under them, or any of them, be forever enjoined and restrained from erecting

an electric generating plant and/or distribution system in said city by use and application of the proceeds of the bond issue proposed to be authorized by Ordinance No. 713 of the said city, of the proceeds of any loan or gift or grant from the Federal Emergency Administration of Public Works, or by means of any pledge of the receipts of said plant or distribution system.

(3) That the defendant city, and the defendant officers, their assistants, agents, employees, attorneys and all persons acting through or under them, or any of them, be restrained and enjoined from the sale or delivery of any of the bonds of said city which are purported to be authorized by Ordinance No. 713 of said city until the said defendants have provided for an annual tax in addition to all other taxes, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years, and after an election as provided and required by Section 3 of Article VIII of the Constitution of the State of Idaho.

(4) That said defendant city and the defendant city officers, and each of the defendants, their assistants, agents, employees, attorneys and all persons acting through or under them, or any of them, be enjoined and restrained during the pendency of this action from entering into any contract with the Federal Emergency Administration of Public Works for the purpose of providing for or in furtherance of the construction of a municipal electric power generating and distribution

system and/or from delivering to the said Federal Emergency Administration of Public Works any bonds of the city or from accepting or receiving any moneys thereon or therefor, or from accepting any gift or grant on account thereof, or from entering into any contract with respect to the building of or for the purpose of or in furtherance of the construction of a municipal electric power generating and distribution system in the City of Coeur d'Alene.

(5) Pending the final hearing of this suit, that the defendants and each of them, their officers, agents, attorneys and all persons acting through or under them, be enjoined and restrained from proceeding with or making effective any act or transaction in connection with or in furtherance of the construction of a municipal electric generating plant and distribution system, or the financing thereof with Federal Emergency Administration of Public Works funds or gifts or grants, or from issuing, pledging, selling or delivering any bonds of said city which are purported to be authorized by said Ordinance No. 713, or accepting, using or applying any moneys the proceeds of any loan, grant or gift from the Federal Emergency Administration of Public Works for any of said purposes.

(6) That this court grant unto the plaintiff a temporary restraining order against the defendants, their officers, agents, attorneys and all persons acting through or under them, or any of them, until the matter of plaintiff's application for preliminary injunction shall be

heard and determined, enjoining and restraining them from proceeding with or making effective any act or transaction in connection with or in furtherance of the construction of a municipal electric generating plant and distribution system, or the financing thereof with Federal Emergency Administration of Public Works funds or gifts or grants, or from issuing, pledging, selling, or delivering any bonds of said city which are purported to be authorized by said Ordinance No. 713, or acting, using or applying any moneys the proceeds of any loan, grant or gift from the Federal Emergency Administration of Public Works for any of said purposes.

(7) That this court grant to this plaintiff all other relief that it may be entitled to in equity, including such restraining orders, interlocutory injunction orders and other interlocutory relief as may be required to protect its said rights.

That plaintiff may have and recover its costs herein.

JOHN P. GRAY
W. F. McNAUGHTON
ROBERT H. ELDER
Attorneys for Plaintiff
Coeur d'Alene, Idaho

STATE OF IDAHO,
COUNTY OF KOOTENAI. } ss.

J. E. E. Royer, being first duly sworn, on oath deposes and says:

That he is the General Manager of The Washington Water Power Company, a corporation of the State of Washington, the complainant named in the above and foregoing amended bill in equity and as such officer makes this verification for and on behalf of said corporation, being duly authorized so to do; that he has read the foregoing amended bill in equity and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief and as to those matters, that he believes it to be true.

J. E. E. ROYER

Subscribed and sworn to before me this 3rd day of December, 1934.

F. MEADE

SEAL

Notary Public in and for the State of Idaho, residing at Coeur d'Alene, Idaho

EXHIBIT A.

ORDINANCE NO. 713

AN ORDINANCE PROVIDING FOR THE INCURRING BY THE CITY OF COEUR D'ALENE, IDAHO, OF A MUNICIPAL INDEBTEDNESS OF $300,000.00 BY THE ISSUANCE OF THE MUNICIPAL COUPON BONDS OF SAID CITY IN SAID PRINCIPAL AMOUNT FOR THE PUR-

POSE OF PAYING THE COST AND EXPENSES OF THE ACQUISITION, BY PURCHASE OR BY CONSTRUCTION THEREOF, OF A LIGHT AND POWER PLANT FOR SAID CITY: SPECIFYING THE TIME SAID BONDS SHALL BEAR, AND FOR THE ISSUANCE OF SAID BONDS OF THE AMORTIZATION PLAN AND FOR ANNUAL INTEREST TAX LEVIES AND ANNUAL BOND PRINCIPAL TAX LEVIES AND FOR THE CREATION OF A SINKING FUND FOR THE PAYMENT OF THE PRINCIPAL AND THE INTEREST UPON SAID BONDS AND FOR THE PAYMENT OF SAID INDEBTEDNESS THUS TO BE INCURRED, WITHIN THE ULTIMATE MATURITY OF SAID BONDS AND WITHIN TWENTY YEARS FROM THE TIME OF CONTRACTING SAID INDEBTEDNESS: CALLING A SPECIAL ELECTION FOR SUBMISSION TO THE QUALIFIED TAXPAYER ELECTORS OF SAID CITY THE QUESTION OF THE RATIFICATION OR REJECTION OF SAID INDEBTEDNESS AND SAID BOND ISSUE FOR SAID PURPOSE, AND PROVIDING FOR NOTICE THEREOF AND FOR THE HOLDING THEREOF, FOR THE PUBLICATION OF THIS ORDINANCE AND DE-

CLARING THE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED by the Mayor and City Council of the City of Coeur d'Alene, Kootenai County, Idaho:

Section 1. That the City of Coeur d'Alene, Idaho, shall issue its general obligation municipal coupon bonds in the principal amount of $300,000.00 and incur a municipal indebtedness in said amount for the purpose of acquiring by purchase or construction a light and power plant for said city, also including plant site, transmission and distribution lines and the necessary rights of way for the same.

Section 2. That said bonds shall run for a period of twenty (20) years after their date of issue which shall be the ultimate maturity of such bonds and the annual principal bond maturities thereof and the principal amounts which will be paid annually shall be amortized and payable in accordance with the provisions of the "Municipal Bond Law" of the State of Idaho, being Chapter 262 of the Session Laws of Idaho of 1927, whereby (and it is further ordained hereby) the first annual amortized bond principal payment shall mature and be payable at the expiration of two years from and after the date of issue of said bonds and the various annual principal maturities, as nearly as practicable, shall be in such principal amounts as will, together with accruing interest on all outstanding bonds of this bond issue, be met and paid by an equal annual tax levy for the payment of the principal of said bonds and interest thereon during the term of years as aforesaid, for which

said bonds shall be issued; which said bonds shall bear interest at a rate not exceeding six percent (6%) per annum, which interest shall be payable semi-annually, and which bonds in denominations and in all other respects shall be as provided by law and consistent with the provisions of said "Municipal Bond Law" and the law of this state and as hereafter prescribed specifically by the City Council.

Section 3. The Mayor and City Council of the City of Coeur d'Alene shall levy and cause to be levied and collected annually at the times when and in the manner in which other general taxes of said city are levied and collected, upon all the taxable property within the limits of said city, in addition to all other authorized taxes and assessments, an annual tax sufficient to meet and pay the interest on such indebtedness as it falls due, according to the foregoing, and also to meet and to pay the foregoing bond principal amounts as they mature and to constitute a sinking fund for the payment of the principal of said indebtedness and said bond issue as said bonds mature and within the ultimate maturity of this bond issue and within twenty years from the time of contracting the same as required by law; and said tax levies thus specified are hereby ordained and directed to be made and said sinking fund is hereby ordained and directed to be made, and is hereby constituted and created in the office of the Treasurer of this city.

Section 4. That a special election of the qualified electors who are taxpayers of said City shall be and is

hereby ordered to be held in said city on Tuesday, the 12th day of December, 1933, between the hours of nine o'clock A. M. and seven o'clock P. M. at which election the question of the issuance of said bonds and the incurring of said indebtedness thereby for the foregoing purpose shall be submitted to the votes and to the assent or rejection of such qualified taxpayer electors. All qualified electors of said State and of this city, as provided by law, who are taxpayers of said city (and who are registered as required by law) shall be entitled to vote at such election. The election will be held at the following voting places within said city, viz:

First Ward, Fire Station.

Second Ward, Central School.

Third Ward, Fullers Garage.

Fourth Ward, High School Gymnasium.

Such voting places and the ballot boxes for said special election will open at the hour of nine o'clock A. M. and will continue open until, and will close at, the hour of 7:00 o'clock P. M. on said day. The voting at said election shall be by ballot and the proposition which shall be submitted thereon at said election shall be substantially in the following alternative form, viz:

"IN FAVOR OF ISSUING BONDS to the amount of $300,000.00 for the purpose stated in Ordinance No. 713",

and

"AGAINST ISSUING BONDS to the amount

of $300,000.00 for the purpose stated in Ordinance No. 713".

If at such election two thirds of the electors qualified and entitled to vote at said election and being taxpayers of and in said city, voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created, for the purpose aforesaid, such bonds for said purpose shall be issued as provided herein and in the maner provided by the "Municipal Bond Law" of the State of Idaho above referred to.

Section 5. Notice of said election shall be published in the Coeur d'Alene Press, a daily newspaper printed and published within this municipal corporation and having a general circulation therein, for the period of thirty days prior to the date fixed for said election; the publication of such notice in said newspaper to be in all daily issues thereof during said period of time, which said published notice shall clearly set forth the date of such election, the voting places therefor, the propositions which shall be submitted at such election to the qualified electors, the hours during which the voting places shall be open, and shall contain such other information as is required, or as may be permitted by law, and shall refer to this ordinance for further details and particulars, and shall be given in the name of the Mayor and Council of this City by the Mayor and Clerk thereof.

Section 6. The City Clerk, the registrar for city elections, shall register the qualified electors who are

taxpayers for said election, commencing with the day that the notice of election is given and first published and thereafter as provided by law, at any time during office hours, and at any other times, all as provided by statute, and shall cause such notice of registration to be given as required by law. The City Clerk shall provide at the expense of this City registration books, blank electors oaths and all other election supplies for said election as provided and required by law.

Section 7. In the event that the federal government shall grant or donate to the city moneys to pay a part of the cost and expense of the foregoing, it will be proper for the City Council to sell and to issue only such amount of bonds as shall be required to pay that part of the cost and expense of the foregoing thus left unprovided for:

Section 8. This ordinance shall take effect and be in full force upon its pasage, approval and publication in one issue of the Coeur d'Alene Press, a newspaper of general circulation printed and published in the City of Coeur d'Alene and the official newspaper thereof.

Passed under suspension of rules upon which a roll call vote was duly taken, and duly enacted an ordinance of the City of Coeur d'Alene, at a regular meeting of the City Council of said City held on November 2, 1933, at the hour of 7:30 o'clock P. M.

Approved by the Mayor this 2nd day of November, 1933.

JOHN KNOX COE

Mayor

Attest:

WILLIAM T. REED

City Clerk.

EXHIBIT B.

ORDINANCE NO. 94

An Ordinance granting Consumers Company, a Corporation created and existing under and by virtue of the law of the State of Idaho, a Franchise for furnishing to the inhabitants of the village of Coeur d'Alene, Idaho, electricity for lighting and other purposes, and authority for placing and maintaining poles and wires and other facilities for the transmission of electricity in the streets and alleys of said village.

BE IT ORDAINED by the Chairman and Board of Trustees of the Village of Coeur d'Alene, Kootenai County, Idaho.

Section 1. That the Consumers Company, a Corporation created under the laws of the State of Idaho, its successors and assigns, be and they are hereby granted the right of furnishing the Village of Coeur d'Alene, Idaho, and the inhabitants thereof, with electricity for lighting, heating, power and all other purposes for

which it may be adapted for the period of Fifty (50) years from the date hereof.

Section 2. Said Company, its successors and assigns, are hereby authorized to erect and maintain poles, wires and other facilities for the transmission and distribution of electricity for lighting, heating, power and all other purposes to which it may be adapted, in and along any and all of the streets and alleys of said Village within the limits of said Village as they now exist or may hereafter be extended; and also the right to lay and maintain such wires and other facilities under ground whenever it may elect to do so.

Section 3. Such poles shall be of uniform height as nearly as practical, of not less than twenty-five (25) feet in height above the ground in alleys, and not less than thirty (30) feet in height above ground in streets, and shall be set at least five (5) feet in ground. Poles erected on Sherman Street between First and Ninth, shall be uniform in height and color with the telephone poles now maintained on such street, and shall be protected by hoop iron wrapping or otherwise for at least six (6) feet above curb. All wires shall be suitably insulated where attached to poles, and shall be strung in such maner as to give as little obstruction to the free use of the streets and allays as practical.

Section 4. Said Company, or its succesors or assigns, shall, at the expense of said village, place arc lights at such points upon the streets of said village as said village may designate and shall furnish lights to said vil-

lage for street lighting purposes during the continuance of the Franchise hereby granted, upon such terms as may be agreed upon hereafter.

Section 5. Said Company, its successors and assigns, shall furnish to the inhabitants of said village, at reasonable rates, and without discrimination, electric lights of standard candle power, as soon as its plant shall be in operation, and thereafter during the continuance of the Franchise hereby granted.

Section 6. Said Consumers Company, its successors and assigns, shall within ten (10) days after the passage and approval of this Ordinance, file with the clerk of said village its written acceptance of the terms hereof, and of the terms of Ordinance No. 93, entitled "An Ordinance granting to the Consumers Company, its successors and assigns, the rights to furnish water to the inhabitants of the village of Coeur d'Alene, Kootenai County, Idaho, etc.," otherwise neither said Consumers Company nor its successors nor assigns, shall acquire any right hereunder.

Section 7. Said Consumers Company, its successors and assigns, shall, within six (6) months from the date hereof, complete and place in operation a suitable lighting plant and system of wiring for the distribution of electricity for lighting and other purposes, throughout the said village.

Section 8. This Ordinance shall take effect upon its passage and its publication in one regular issue of the Coeur d'Alene Press, a weekly newspaper of general

circulation, published in said Village of Coeur d'Alene, Idaho.

Passed the first reading at a special meeting of the Board of Trustees called for that purpose, held October 19th, 1903.

Passed its second reading, under suspension of the rules, at a special meeting of the Board of Trustees called for that purpose, held October 19th, 1903.

Passed its third and final reading, and duly enacted an ordinance of the Village of Coeur d'Alene, Idaho, at a special meeting of the Board of Trustees, called for that purpose, held October 19th, 1903.

Approved October 19th, 1903.

A. V. CHAMBERLAIN
Chairman, Board of Trustees

Attest:
James H. Harte
Village Clerk

Published in the Coeur d'Alene Press, a weekly newspaper published in the Village of Coeur d'Alene, Idaho, in its regular issue of October 24th, 1903.

James H. Harte
Village Clerk

EXHIBIT "C"

ORDINANCE NO. 723

AN ORDINANCE APPROVING A LOAN AND GRANT AGREEMENT BE-

TWEEN THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AND THE UNITED STATES OF AMERICA, AND AUTHORIZING ITS EXECUTION, AND PROVIDING FOR THE PUBLICATION THEREOF.

BE IT ORDAINED by the Mayor and City Council of the City of Coeur d'Alene, Kootenai County, Idaho:

Section 1. That the Loan and Grant Agreement between the City of Coeur d'Alene, Kootenai County, Idaho, and the United States of America, under and subject to the terms of which the United States will by loan and grant not exceeding in the aggregate the sum of $650,000.00 aid said City of Coeur d'Alene in financing the construction of a water system including sinking wells, installing pumps and a distributing system for water service; also a Diesel engine, generating plant, and an electric distributing system, a copy of which Loan and Grant Agreement is filed among the Public Records of the City of Coeur d'Alene in the office of the City Clerk thereof, and which Loan and Grant Agreement is hereby made a part hereof, be, and the same is hereby in all respects approved.

Section 2. That the Mayor of said City of Coeur d'Alene be, and he is hereby authorized and directed to execute such Loan and Grant Agreement in triplicate on behalf of the City of Coeur d'Alene, and the City Clerk of said City of Coeur d'Alene be, and he is hereby

authorized and directed to impress or affix the official seal of said City each of said three copies of said Loan and Grant Agreement, and to attest such seal.

Section 3. That the said Mayor of said City be, and is hereby authorized and directed to forthwith forward three copies of said Loan and Grant Agreement as executed on behalf of said City of Coeur d'Alene, to the Federal Emergency Administration of Public Works, Washington, D. C.

Section 4. That the Mayor and City Clerk be, and they are hereby authorized and empowered on behalf of said City and the City Council to request and consent to modifications of or any changes in said Loan and Grant Agreement with reference to the designation, date, denominations, medium of payment, places of payment, and registration or conversion privileges of the bonds to be issued thereunder in order to comply with the requirements of law and of the proceedings taken for the issuance of said bonds, and to execute in the same manner as said Loan and Grant Agreement any further instruments that may be found desirable in connection with such modifications or changes.

Section 5. That said Mayor be, and he is hereby authorized and directed to forthwith send to said Federal Emergency Administration of Public Works, two certified copies of this ordinance and two certified copies of the proceedings of the City Council in connection with the adoption of this ordinance, and such further documents or proofs in connection with the approval

and execution of said Loan and Grant Agreement as may be required by said Federal Emergency Administration of Public Works.

Section 6. This ordinance shall take effect and be in full force after its passage, approval and publication in one issue of the Coeur d'Alene Press, a newspaper of general circulation in said City of Coeur d'Alene, and the official newspaper thereof.

Passed under suspension of rules upon which a roll call vote was duly taken and duly enacted in ordinance of the City of Coeur d'Alene, at a special meeting of the City Council held at the Council Chambers in the City Hall at Coeur d'Alene, Kootenai County, Idaho, the 23rd day of November, A. D. 1934, at the hour of one o'clock P. M.

Approved by the Mayor this 23rd day of November, A. D., 1934.

JOHN KNOX COE
Mayor

Attest: WILLIAM T. REED
City Clerk

(Seal of the City of Coeur d'Alene)

"EXHIBIT D"

LOAN AND GRANT AGREEMENT

between the

CITY OF COEUR D'ALENE

KOOTENAI COUNTY, IDAHO,

and the

UNITED STATES OF AMERICA

P. W. A. Docket No. 6695

PART ONE—Exhibit "D"

1. *Purpose of Agreement.* Subject to the terms and conditions of this Agreement, the United States of America (herein called the "Government") will, by loan and grant not exceeding in the aggregate the sum of $650,000 (herein called the "Allotment") aid the City of Coeur d'Alene, Kootenai County, Idaho (herein called the "Borrower") in financing a project (herein called the "Project") consisting substantially of the construction of a water system, including sinking wells, installing pumps and a distributing system for water service; also a Diesel engine generating plant and an electric distributing system, all pursuant to the Borrower's application (herein called the "application") P. W. A. Docket No. 6695, Title II of the National Industrial Recovery Act (herein called the "Act") and the Constitution and Statutes of the State of Idaho (herein called the "State").

2. *Amount and Method of Making Loan.* The Borrower will sell and the Government will buy, at the principal amount thereof plus accrued interest, $504,000 aggregate principal amount of negotiable coupon bonds (herein called the "Bonds") of the description outlined below or such other description as may be satisfactory

to the Borrower and to the Administrator, bearing interest at the rate of 4 percent per annum, payable semiannually from date until maturity, less such amount of the Bonds, if any, as the Borrower may sell to purchasers other than the Government.

(a) Date: September 1, 1934.

(b) Denomination: $1,000.

(c) Place of Payment: At the office of the city treasurer, Coeur d'Alene, Idaho, or, at the option of the holder, at a bank or trust company in the Borough of Manhattan, City and State of New York.

(d) Registration Privileges: As to both principal and interest.

(e) Maturities: Payable, without option of prior redemption, on September 1 in years and amounts as follows:

Year	Amount	Year	Amount
1936	$18,000	1946	$27,000
1937	19,000	1947	28,000
1938	20,000	1948	29,000
1939	21,000	1949	30,000
1940	21,000	1050	32,000
1941	22,000	1051	33,000
1942	23,000	1052	34,000
1943	24,000	1953	36,000
1944	25,000	1054	36,000
1945	26,000		

(f) Security: General obligations of the Borrower payable as to both principal and interest from ad valorem taxes which may be levied without limit as to rate or amount upon all the taxable property within the territorial limits of the Borrower.

3. *Amount and Method of Making Grant.* The Government will make and the Borrower will accept, whether or not any or all of the Bonds are sold to purchasers other than the Government, a grant (herein called the "Grant") in an amount equal to 30 per centum of the cost of labor and materials employed upon the Project. The determination by the Federal Emergency Administrator of Public Works (herein called the "Administrator") of the cost of the labor and materials employed upon the Project shall be conclusive. The Government will make part of the Grant by payment of money and the remainder of the Grant by cancellation of Bonds or interest coupons or both. If all of the Bonds are sold to purchasers other than the Government, the Government will make the entire Grant by payment of money. In no event shall the Grant, whether made partly by payment of money and partly by cancellation, or wholly by payment of money, be in excess of $175,000.

4. *Bond Proceedings.* When the Agreement has been executed, the Borrower (unless it has already done so) shall promptly take all proceedings necessary for the authorization and issuance of the Bonds.

5. *Bond and Grant Requisitions.* From time to time after the execution of this Agreement, the Borrower shall file a requisition with the Government requesting the Government to take up and pay for Bonds or to make a payment on account of the Grant. Each requisition shall be accompanied by such documents as may be requested by the Administrator (a requisition together with such documents being herein collectively called a "Requisition").

6. *Bond Purchases.* If a Requisition requesting the Government to take up and pay for Bonds is satisfactory in form and substance to the Administrator, the Government, within a reasonable time after the receipt of such Requisition, will take up and pay for Bonds, having maturities satisfactory to the Administrator, in such amount as will provide, in the judgment of the Administrator, sufficient funds for the construction of the Project for a reasonable period. Payment for such Bonds shall be made at a Federal Reserve Bank to be designated by the Administrator or at such other place or places as the Administrator may designate, against delivery by the Borrower, of such Bonds, having all unmatured interest coupons attached thereto, together with such documents as may be requested by the Administrator. The Government shall be under no obligation to take up and pay for Bonds beyond the amount which in the judgment of the Administrator is needed by the Borrower to complete the Project.

7. *Grant by Payment of Money.* If a Requisition re-

questing the Government to make a payment on account of the Grant is satisfactory in form and substance to the Administrator, the Government will pay to the Borrower at such place or places as the Administrator may designate against delivery by the Borrower of its receipt therefor, a sum of money equal to the difference between the aggregate amount previously paid on account of the Grant, and

(a) 25 per centum of the cost of the labor and materials shown in the Requisition to have been employed upon the Project if the Requisition shows that the Project has not been completed, or

(b) 30 per centum of the cost of such labor and materials if the Requisition shows that the Project has been completed and that all costs incurred in connection therewith have been determined;

Provided, however, that the part of the Grant made by payment of money to the Borrower shall not be in excess of the difference between the Allotment and the amount paid (not including the amount paid as accrued interest) for the Bonds taken up by the Government. The Government reserves the right to make any part of the Grant by cancellation of Bonds or interest coupons or both rather than by payment of money if, in the judgment of the Administrator, the Borrower does not need the money to pay costs incurred in connection with the construction of the Project.

8. *Grant by Cancellation of Bonds.* If the Borrower, within a reasonable time after the completion of

the Project, shall have filed a Requisition, satisfactory in form and substance to the Administrator, then the Government will cancel such Bonds and interest coupons as may be selected by the Administrator in an aggregate amount equal (as nearly as may be) to the difference between 30 per centum of the cost of the labor and materials employed upon the Project and the part of the Grant made by payment of money. The Government will hold Bonds or interest coupons for such reasonable time in an amount sufficient to permit compliance with provisions of this Paragraph, unless payment of such difference shall have been otherwise provided for by the Government.

9. *Grant Advances.* At any time after the execution of this Agreement the Government may, upon request of the Borrower, if in the judgment of the Administrator the circumstances so warrant, make advances to the Borrower on account of the Grant, but such advances shall not be in excess of 30 per centum of the cost of the labor and materials to be employed upon the Project, as estimated by the Administrator.

10. *Deposit of Bond Proceeds and Grant; Bond Fund; Construction Accounts.* The Borrower shall deposit all accrued interest which it receives from the sale of the Bonds at the time of the payment therefor and any payment on account of the Grant which may be made under the provisions of Paragraph 8 PART ONE, hereof, into an interest and bond retirement fund account (herein called the "Bond Fund") promptly

upon receipt of such accrued interest or such payment on account of the Grant. It will deposit the remaining proceeds from the sale of the Bonds (whether such Bonds are sold to the Government or other purchasers) and the part of the Grant made by payment of money under the provisions of Paragraph 7, PART ONE, hereof, promptly upon the receipt of such proceeds or payments in a separate account or accounts (each of such separate accounts herein called a "construction Account"), in a bank or banks which are members of the Federal Reserve System and of the Federal Deposit Insurance Corporation and which shall be satisfactory at all times to the Administrator.

11. *Disbursement of Monies in Construction Accounts and in Bond Fund.* The Borrower shall expend the monies in a Construction Account only for such purposes as shall have been previously specified in Requisitions filed with the Government and as shall have been approved by the Administrator. Any monies remaining unexpended in any Construction Account after the completion of the Project which are not required to meet obligations incurred in connection with the construction of the Project shall either be paid into the Bond Fund, or said monies shall be used for the purchase of such of the Bonds as are then outstanding at a price not exceeding the principal amount thereof plus accrued interest. Any Bonds so purchased shall be cancelled and no additional Bonds shall be issued in lieu thereof. The monies in the Bond Fund shall be

used solely for the purpose of paying interest on and principal of the Bonds.

12. *Other Financial Aid from the Government.* If the Borrower shall receive any funds (other than those received under this Agreement) directly or indirectly from the Government, or any agency or instrumentality thereof, to aid in financing the construction of the Project, to the extent that such funds are so received the Grant shall be reduced, and to the extent that such funds so received exceed the part of the Grant which would otherwise be made by payment of money, the aggregate principal amount of Bonds to be purchased by the Government shall be reduced.

13. *Construction of Project.* Not later than upon the receipt by it of the first Bond payment, the Borrower will commence or cause to be commenced the construction of the Project, and the Borrower will thereafter continue such construction or cause it to be continued to completion with all practicable dispatch, in an efficient and economical manner, at a reasonable cost and in accordance with the provisions of this Agreement, plans, drawings, specifications and construction contracts which shall be satisfactory to the Administrator, and under such engineering supervision and inspection as the Administrator, may require. Except with the written consent of the Administrator, no materials or equipment for the Project shall be purchased by the Borrower subject to any chattel mortgage, or any conditional sale or title retention agreement.

14. *Information.* During the construction of the Project the Borrower will furnish to the Government all such information and data as the Administrator may request as to the construction, cost and progress of the work. The Borrower will furnish to the Government and to any purchaser from the Government of 25 per centum of the Bonds, such financial statements and other information and data relating to the Borrower as the Administrator or any such purchaser may at any time reasonably require.

15. *Representations and Warranties.* The Borrower represents and warrants as follows:

(a) *Litigation.* No litigation or other proceedings are now pending or threatened which might adversely affect the Bonds, the security therefor, the construction of the Project, or the financial condition of the Borrower; Except An action instituted and now pending in the United States District Court for the District of Idaho, Northern Division brought by the Washington Water Power Company, a corporation against the City of Coeur d'Alene, pleadings of which are herewith enclosed.

(b) *Financial Condition.* The character of the assets and the financial condition of the Borrower are as favorable as at the date of the Borrower's most recent financial statement, furnished to the Government as a part of the Application, and there have been no changes in the character of such assets or in such financial condition except such

changes as are necessary and incidental to the ordinary and usual conduct of the Borrower's affairs;

(c) *Fees and Commissions.* It has not and does not intend to pay any bonus, fee or commission in order to secure the loan or grant hereunder;

(d) *Affirmation.* Every statement contained in this Agreement, in the Application, and in any supplement thereto or amendment thereof, and in any other document submitted to the Government is correct and complete, and no relevant fact materially affecting the Bonds, the security therefor, the Grant or the Project, or the obligations of the Borrower under this Agreement has been omitted therefrom.

16. *Bond Circular.* The Borrower will furnish all such information in proper form for the preparation of a Bond Circular and will take all such steps as the Government or any purchaser or purchasers from the Government of not less than 25 per centum of the Bonds may reasonably request to aid in the sale by the Government or such purchaser or purchasers of any or all of the Bonds.

17. *Expenses.* The Government shall be under no obligation to pay any costs, charges or expenses incident to compliance with any of the duties or obligations of the Borrower under this Agreement including, without limiting the generality of the foregoing, the cost of preparing, executing and delivering the Bonds, and any legal, engineering and accounting costs, charges or

expenses incurred by the Borrower.

18. *Waiver.* Any provision of this Agreement may be waived or amended with the consent of the Borrower and the written approval of the Administrator, without the execution of a new or supplemental agreement.

19. *Interest of Member of Congress.* No Member of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon.

20. *Validation.* The Borrower hereby covenants that it will institute, prosecute and carry to completion in so far as it may be within the power of the Borrower, any and all acts and things to be performed or done to secure the enactment of legislation or to accomplish such other proceedings, judicial or otherwise, as may be necessary, appropriate or advisable to empower the Borrower to issue the Bonds and to remedy any defects, illegalities and irregularities in the proceedings of the Borrower relative to the issuance of the Bonds and to validate the same after the issuance thereof to the Government, if in the judgment of the Administrator such action may be deemed necessary, appropriate or advisable. The Borrower further covenants that it will procure and furnish to the Government, as a condition precedent to the Government's obligations hereunder a letter from the Governor of the State stating that if in the judgment of the Administrator it may be advisable to enact legislation to empower the Borrower to issue the Bonds or to remedy any defects, illegalities or irregu-

larities in the proceedings of the Borrower relative to the issuance thereof or to validate the same, said Governor will recommend and cooperate in the enactment of such legislation.

21. *Naming of Project.* The Project shall never be named except with the written consent of the Administrator.

22. *Undue Delay by the Borrower.* If in the opinion of the Administrator, which shall be conclusive, the Borrower shall delay for an unreasonable time in carrying out any of the duties or obligations to be performed by it under the terms of this Agreement, the Administrator may cancel this Agreement.

23. *Conditions Precedent to the Government's Obligations.* The Government shall be under no obligation to pay for any of the Bonds or to make any Grant:

(a) *Financial Condition and Budget.* If, in the judgment of the Administrator, the financial condition of the Borrower shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government, or the Borrower shall have failed to balance its budget satisfactorily or shall have failed to take action reasonably designed to bring the ordinary current expenditures of the Borrower within the prudently estimated revenues thereof;

(b) *Cost of Project.* If the Administrator shall not be satisfied that the Borrower will be able to

complete the Project for the sum of $650,000, or that the Borrower will be able to obtain, in a manner satisfactory to the Administrator, any additional funds which the Administrator shall estimate to be necessary to complete the Project;

(c) *Compliance.* If the Administrator shall not be satisfied that the Borrower has complied with all the provisions contained in this Agreement or in the proceedings authorizing the issuance of the Bonds, theretofore to be complied with by the Borrower;

(d) *Legal Matters.* If the Administrator shall not be satisfied as to all legal matters and proceedings affecting the Bonds, the security therefor or the construction of the Project;

(e) *Representations.* If any representation made by the Borrower in this Agreement or in the Application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Borrower shall be found by the Administrator to be incorrect or incomplete in any material respect;

(f) *Maturity of Bonds Sold to Government.* If, in the event that some of the Bonds are sold to purchasers other than the Government, the maturities of the remaining Bonds are not satisfactory to the Administrator;

(g) Unless and until the Borrower shall prove to the satisfaction of the State Engineer that the proposed source of water supply is suitable, both as to quantity and quality of water; and that it is necessary and desirable to abandon the present use of water from Lake Coeur d'Alene;

(h) Unless and until the Borrower shall furnish evidence satisfactory to the Administrator that the Washington Water Power Company can be legally required to furnish water and electric services on day to day basis to the Borrower and to customers contemplated to be served by the Project until the Borrower shall have completed the Project;

(i) Unless and until the Borrower shall adopt a rate and bond ordinance, satisfactory to the Administrator, in form, sufficiency and substance. Such ordinace shall, among other things, provide that:

(1) No donations, taxes, depreciation charges, or any other items of expense, except normal operating expenses and maintenance, together with water, lighting and power line extensions, shall be charged against the revenues of the Project;

(2) All municipally used water and electrical energy shall be paid for at current selling rate schedules, except water used in fighting fire, and a reasonable rate shall be paid for hydrant rental,

all such payments to be made, as the service accrues, from the general funds of the Borrower into the funds of the Borrower's water and electric departments.

24. *Use of Diesel engine power plant.* The Borrower hereby covenants that at such time as electrical energy shall be made available from the Government power project at Grand Coulee, State of Washington, at rates such that the cost thereof to the Borrower shall be less than the cost thereof delivered from the Diesel engine generating plant to be constructed as a part of the Project, the Borrower will thereupon and thereafter cease active operation of such Diesel engine power plant and place it on a standby basis only, and will purchase all of its electrical energy requirements from the said Governmental power project at Grand Coulee, Washington. It is hereby specifically recited that the foregoing covenant is a material consideration for the execution of this Agreement on behalf of the Government and for the loan and grant to be made as set forth herein.

PART TWO

IN CONSIDERATION OF THE GRANT, THE BORROWER COVENANTS THAT:

1. *Construction Work.* All work on the Project shall be done subject to the rules and regulations adopted by the Administrator to carry out the purposes and control the administration of the Act. The following

rules and regulations as set out in Bulletin No. 2, Non-Federal Projects revised March 3, 1934, entitled "P. W. A. REQUIREMENTS as to BIDS, CONTRACTORS' BONDS, AND CONTRACT, WAGE, AND LABOR PROVISIONS AND GENERAL INSTRUCTIONS as to APPLICATIONS AND LOANS AND GRANTS", with all blank spaces filled in as provided in said Bulletin, shall be incorporated verbatim in *ALL CONSTRUCTION CONTRACTS* for work on the Project. (Particular care should be taken that in all such construction contracts *the following words* are inserted in the blank space in Paragraph 3 (a) (1): the City of Coeur d'Alene and/or Kootenai County

and *the following words* are inserted in the blank space in Paragraph 3 (a) (2): the State of Idaho).

"1. (a) *Convict labor.*—No convict labor shall be employed on the project, and no materials manufactured or produced by convict labor shall be used on the project.

"(b) *Thirty-hour week.*—Except in executive, administrative, and supervisory positions, so far as practicable and feasible in the judgment of the Government engineer, no individual directly employed on the project shall be permitted to work more than 8 hours in any 1 day nor more than 30 hours in any 1 week: Provided, That this clause shall be construed to permit working time lost because of inclement weather or unavoidable delays in any 1 week to be made up in the

succeeding 20 days.

"(c) No work shall be permitted on Sundays or legal holidays except in cases of emergency.

"2. *Wages.*—(a) All employees directly employed on this work shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort. Such wages shall in no event be less than the minimum hourly wage rates for skilled and unskilled labor prescribed by the Administrator for the zone or zones in which the work is to be done, viz:

Skilled labor.....
Unskilled labor.....

"(b) In the event that the prevailing hourly rates prescribed under collective agreements or understandings between organized labor and employers in effect on April 30, 1933, shall be above the minimum rates specified above, such agreed wage rates shall apply: Provided, That such agreed wage rates shall be effective for the period of this contract, but not to exceed 12 months from the date of the contract.

"(c) The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices, and serving laborers who work and serve skilled journeymen mechanics and who are not to be termed "unskilled laborers."

"(d) The provisions of this contract relating to hours and minimum wage rates for labor directly em-

ployed on the project shall for the purposes of this contract, to the extent applicable, supercede the terms of any code adopted under Title I of the act permitting longer hours or lower minimum wage rates.

"(e) All employees shall be paid in full not less often than once each week and in lawful money of the United States, unless otherwise permitted by the Government engineer, in the full amount accrued to each individual at the time of closing of the pay roll, which shall be at the latest date practicable prior to the date of payment, and there shall be no deductions or rebates on account of goods purchased, rent, or other obligations, but such obligations shall be subject to collection only by legal process: Provided, however, That this clause shall not be construed to prohibit the making of deductions for premiums for compensation and medical aid insurance, in such amounts as are authorized by the laws of..... to be paid by employees, in those cases in which, after the making of the deductions, the wage rates will not be lower than the minimum wage rates herein established.

"(f) A clearly legible statement of all wage rates to be paid the several classes of labor employed on the work, together with a statement of the deductions therefrom for premiums for workmen's compensation and/or medical aid insurance authorized by the laws of ....., should such deductions be made, shall be posted in a prominent and easily accessible place at the site of the work, and there shall be kept a true and ac-

curate record of the hours worked by and the wages, exclusive of all authorized deductions, paid to each employee, and the engineer inspector shall be furnished with a sworn statement thereof on demand.

"(g) The Board of Labor Review (herein called the "Board") shall hear all labor issues arising under the operation of this contract and such issues as may result from fundamental changes in economic conditions during the life of this contract.

"(h) The minimum wage rates herein established shall be subject to change by the Administrator on recommendations of the Board. In the event that, as a result of fundamental changes in economic conditions, the Administrator, acting on such recommendation, from time to time establishes different minimum wage rates (referred to in paragraph 2 (a), (b), and (c) hereof) all contracts for work on the project shall be adjusted accordingly by the parties thereto so that the contract price to the contractor under any contract or to any subcontractor under any subcontract shall be increased by an amount equal to any such increased cost, or decreased in an amount equal to such decreased cost.

"(i) Engineers, architects, and other professional and subprofessional employees engaged in duties normally done at the site of the project shall receive at least the prevailing rates for the various types of service to be rendered, provided that in no case shall professional employees receive less than the following weekly com-

pensation for 40 hours or less irrespective of the number of hours employed: $36.00 in the northern zone; $33.00 in the central zone; and $30.00 in the southern zone. Where the working week is longer than 40 hours, weekly compensation shall be increased proportionally. Compensation under this paragraph shall be subject to the approval of the Government engineer.

"3. (a) *Labor preferences.*—Preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (1) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (political subdivision and/or county) .....and (2) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (State, Territory, or district) .....: Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates.

(b) *Employment services.*—To the fullest extent possible, labor required for the project and appropriate to be secured through employment services shall be chosen from the lists of qualified workers submitted by local employment agencies designated by the United States Employment Service: Provided, however, That union labor, skilled and unskilled, shall not be required to register at such local employment agencies but, if such labor is desired by the employer, shall be secured

in the customary ways through recognized union locals. In the event, however, that employers who wish to employ union labor are not furnished with qualified union workers by the union locals which are authorized to furnish such labor residing in the locality within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all labor shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service. In the selection of workers from lists prepared by such employment agencies and union locals, the labor preferences provided in section (a) of this paragraph 3 shall be observed, and preference shall be given to those unemployed at the date of registration who, at the date of selection, have no other available employment.

"(c) *Compliance with Title I of the Act.*—The following sections 7 (a) (1) and 7 (a) (2) of Title I of the Act shall be observed:

> "(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employees and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from

joining, organizing, or assisting a labor organization of his own choosing.

"4. *Human labor.*—The maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage; and to the extent that the work may be accomplished at no greater expense by human labor than by the use of machinery, and labor of requisite qualifications is available, such human labor shall be employed.

"5. *Compensation insurance.*—Every employer of labor shall provide, if permitted by the laws of..... adequate workmen's compensation insurance for all labor employed by him on the project who may come within the protection of such laws and shall provide, where practicable, employers' general liability insurance for the benefit of his employees not protected by such compensation laws, and proof of such insurance satisfactory to the Government engineer shall be given. Where it is not permitted by law that such insurance be provided, some method satisfactory to the Administrator must be provided by which the employees may, by paying the entire amount of the premiums, derive a similar protection.

"6. *Persons entitled to benefits of labor provisions.*—There shall be extended to every person who performs the work of a laborer or of a mechanic on the project or on any part thereof the benefits of the labor and wage provisions of this contract, regardless of any contractual relationship between the employer and

such laborer or mechanic. There shall be no discrimination in the selection of labor on the ground of race, creed, or color.

"7. *Withholding payment.*—Under all construction contracts, ...(The borrower).....may withhold from the contractor so much of accrued payments as may be necessary to pay to laborers or mechanics employed on the work the difference between the rate of wages required by this contract to be paid to laborers or mechanics on the work and the rate of wages actually paid to such laborers or mechanics.

"8. *Accident prevention.*—Reasonable precautions shall at all times be exercised for the safety of employees on the work and applicable provisions of the Federal, State, and municipal safety laws and building and construction codes shall be observed. All machinery and equipment and other physical hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, unless and to the extent that such provisions are incompatible with Federal, State, or municipal laws or regulations.

"9. *N. R. A. Compliance.*—The contractor shall comply with each approved code of fair competition to which he is subject, and if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under Section 4 (a) of the National Industrial Recovery Act (President's Re-

employment Agreement), and.....(The borrower)..... shall have the right, subject to the approval of the Government engineer, to cancel this contract for failure to comply with this provision and make open market purchases or have the work called for by this contract otherwise performed at the expense of the contractor. So far as articles, materials or supplies produced in the United States are concerned, no articles, materials or supplies shall be accepted or purchased for the performance of the work nor shall any subcontracts be entered into for any articles, materials or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid.

"10. (a) *Inspection of records.*—The Administrator, through his authorized agents, shall have the right to inspect all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of materials, and any and all other data relevant to the performance of this contract. There shall be submitted to the Administrator, through his authorized agents, the names and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Administrator, through his authorized agents, may require. The sub-

mission and approval of said schedules, if required, shall be a condition precedent to the making of any payment under the contract.

"(b) There shall be provided for the use of the engineer inspector such reasonable facilities as he may request. In case of dispute the Government engineer shall determine the reasonableness of the request.

"11. *Reports.*—Every employer of labor on the project shall report within 5 days after the close of each calendar month, on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls, and the man-hours work, wage scales paid to the various classes of labor, and the total expenditures for materials. Two copies of each of such monthly reports are to be furnished to the Government engineer, and one copy of each to the United States Department of Labor. The contractor under any construction contract shall also furnish to .....(The borrower)..... to the Government engineer and to the United States Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

"12. There shall be provided all necessary services and all materials, tools, implements, and appliances required to perform and complete entirely and in a workmanlike manner the work provided for in this contract. Except as otherwise approved in writing by the Government engineer, such services shall be paid for in full

at least once a month and such materials, tools, implements, and appliances shall be paid for at least once a month to the extent of 90 percent of the cost thereof to the contractor, and the remaining 10 percent shall be paid 30 days after the completion of the part of the work in or on which such materials, tools, implements, or appliances are incorporated or used.

"13. *Signs.*—Signs bearing the legend Public Works Project No. ..... shall be erected in appropriate places at the site of the project.

"14. All reasonable rules and regulations which the Public Works Administration may prescribe toward the effectuation of the matters covered by paragraphs 1 to 13, inclusive, shall be observed in the performance of the work.

"15. *Subcontractors.*—(a) Appropriate provisions shall be inserted in all subcontracts relating to this work to insure the fulfillment of all provisions of this contract affecting such subcontractor, particularly paragraphs 1 to 14, inclusive.

"(b) No bid shall be received from any subcontractor who has not signed U. S. Government Form No. P. W. A. 61, revised (March 1934).

"16. *Termination for breach.*—In the event that any of the provisions of paragraphs 1 to 15, inclusive, of this contract are violated by the contractor under the construction contract or by any subcontractor under any subcontract on the work, ...(The borrower)..... may,

subject to the approval of the Government engineer, and upon request of the Administrator, shall terminate the contract by serving written notice upon the contractor of its intention to terminate such contract, and, unless within 10 days after the serving of such notice such violation shall cease, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination ....(The borrower).... may take over the work and prosecute the same to completion or otherwise for the account and at the expense of the contractor and/or such subcontractor, and the contractor and his sureties shall be liable to....(The borrower).... for any excess cost occasioned ....(The borrower).... in the event of any such termination, and ..... (The borrower)..... may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work, and necessary therefor. This clause shall not be construed to prevent the termination for other causes provided in the construction contract.

"17. *Definitions.*—The term "Act" as used herein refers to the National Industrial Recovery Act. The term "Government engineer" as used herein shall mean the State engineer (P. W. A.) or his duly authorized representative, or any person designated to perform his duties or functions under this agreement by the Administrator. The term "engineer inspector" as used herein refers to State engineer inspectors, resident and assistant resident engineer inspectors, and supervising engi-

neers, appointed by the Administrator. The term "materials" as used herein includes, in addition to materials incorporated in the project used or to be used in the operation thereof, equipment and other materials used and/or consumed in the performance of the work."

2. *Restriction as to Contractors.* The Borrower shall receive no bid from any contractor, nor permit any contractor to receive any bid from any subcontractor, who has not signed U. S. Government Form No. P. W. A. 61, revised March, 1934.

3. *Bonds and Insurance.* Construction contracts shall be supported by adequate surety or other bonds or security satisfactory to the Administrator for the protection of the Borrower, or materialmen, and of labor employed on the Project or any part thereof. The contractor under any construction contract shall be required to provide public liability insurance in an amount satisfactory to the Administrator.

4. *Force Account.* All construction work on the Project shall be done under contract, provided, however, that if prices in the bids are excessive, the Borrower reserves the right, anything in this Agreement to the contrary notwithstanding, to apply to the Administrator for permission to do all or any part of the Project on a force account basis.

This Agreement shall be binding upon the parties hereto when a copy thereof, duly executed by the Borrower and the Government, shall have been received by

the Borrower. This agreement shall be governed by and be construed in accordance with the laws of the State. If any provision of this Agreement shall be invalid in whole or in part, to the extent it is not invalid it shall be valid and effective and no such invalidity shall affect, in whole or in part, the validity and effectiveness of any other provision of this Agreement or the rights or obligations of the parties hereto, provided, however, that in the opinion of the Administrator, the Agreement does not then violate the terms of the Act.

IN WITNESS WHEREOF, the Borrower and the Government have respectively caused this Agreement to be duly executed as of

City of Coeur d'Alene.

By .....

.....

SEAL:

ATTEST:

.....

.....

UNITED STATES OF AMERICA

By .....

Federal Emergency Administrator of Public Works.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION

STIPULATION.

The Washington Water Power Company, a corporation,

Plaintiff,

vs.

City of Coeur d'Alene, Idaho, a municipal corporation; J. K. Coe, Mayor; A. Grantham, Treasurer; William T. Reed, Clerk; Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, members of the City Council of said City of Coeur d'Alene, Idaho, and Harold L. Ickes, as Federal Emergency Administrator of Public Works,

Defendants,

We, the undersigned attorneys for the defendants, except the defendant Harold L. Ickes, Federal Emergency Administrator of Public Works, do hereby accept service of the foregoing amended bill of complaint,

and consent to the entry of an order by the above entitled court permitting and directing the filing thereof.

C. H. POTTS
W. B. McFARLAND
Attorneys for Defendants.

(Title of Court and Cause)

AFFIDAVIT

Filed November 20, 1934.

STATE OF IDAHO)
County of Kootenai) ss.

RICHARD McKAY, being first duly sworn, upon his oath, deposes and says:

That he is an electrical engineer by profession; that he graduated from Whitman College with the degree of Bachelor of Arts and from the engineering school of Columbia University with the degree of Electrical Engineer; that he has been engaged in the active practice of his profession since the year 1921 in the states of Idaho and Washington; that he has been in responsible charge of the electric design of power plants, has designed a relay system which is in use by the plaintiff company, has engaged in research of loads and the development of power and research in the problems of rate making and costs; that for eighteen months during

said period he was manager of the Washington Water Power Company at Coeur d'Alene and was in charge of the distribution system in said city; and affiant is generally familiar with the plants, transmission lines and distribution systems of The Washington Water Power Company.

The Washington Water Power Company owns a hydro-electric power plant with controlling works situated on the Spokane River at Post Falls, Idaho, about ten miles from Coeur d'Alene; said plant was constructed about 1904 and 1905 and has operated continuously since the year 1906; The Washington Water Power Company is also the owner of several hydro-electric power plants situated on the Spokane River in the State of Washington.

The power plants of the plaintiff are connected by transmission lines for the purpose of affording continuity of service to the many customers of plaintiff; the power transmission lines of plaintiff extend into the counties of Kootenai, Shoshone, Bonner, Latah, Nez Perce, Benewah, Clearwater, Idaho and Lewis in said State of Idaho and plaintiff furnishes electric power for practically all uses in said counties; plaintiff has ample developed power capacity and facilities to serve all persons and uses now being, or reasonably to be anticipated, for many years in the said counties of northern Idaho.

The power plants, transmission lines and other facilities are modern and efficient and plaintiff renders and

has rendered an efficient, superior and completely adequate electric utility service in the districts covered by its lines in Idaho.

Plaintiff has acquired and owns light and power distribution systems in various cities and villages of northern Idaho, and in each of said cities and villages it renders electric light and power service to the inhabitants and in addition thereto to the districts and territory adjacent and tributary to said municipalities; the uses to which plaintiff's power is devoted are divers in character—power being furnished for domestic and commercial purposes and for all industrial purposes in said district; power is also distributed and sold for pumping water for irrigation, for mining and smelting uses and for transportation.

Preferred stock of the plaintiff has been sold in northern Idaho to consumers, employees and other citizens; more than 200 citizens of the City of Coeur d'Alene alone are owners of the preferred stock of the plaintiff.

About the year 1930 plaintiff purchased the electric power and distribution system in the City of Coeur d'Alene and has since owned and operated the same.

The Company holds franchise granted by the City which expires in 1953, a copy of the said franchise being attached to the complaint.

Since acquiring said distribution system plaintiff has expended more than the sum of $33,000.00 in improving and reconstructing said system and in improving

the facilities thereof, and the sum of $27,000.00 for the installation of new transformers to insure continuity of service. The electric service is supplied over a high tension line of high dependability; on the west, the line is connected with the main transmission system of the company, and on the east, it is connected with a second main transmission line of the company, which line is connected with the general power transmission line of Montana Power Company for added assurance of service; and in this way, reliable and continuous service is provided from two major sources.

The distribution system in Coeur d'Alene is adequate for all demands which have been made upon it or which may reasonably be anticipated, and can be added to at any time an additional demand arises. The service has been of high quality and reliability.

The rates charged for electric service were fixed by the Public Utilities Commission of Idaho in 1922 after a valuation and rate hearing, and have remained in effect since said date except that plaintiff has, in the four years since it acquired said distribution system, made and put into effect four reductions in different rate schedules, which rate reductions aggregated $11,400.00 annually. The rates so fixed in 1922 by the Public Utilities Commission and the valuation of the said property were reviewed by the supreme court of the State of Idaho and the order was by that court affirmed.

The plaintiff furnishes electric service to all classes of customers in the City of Coeur d'Alene numbering

2377 and in addition furnishes electric service to approximately 332 additional customers residing outside the city limits and in territory adjacent to the said city; plaintiff supplies all of the electric light and power sold and distributed in said City of Coeur d'Alene; in addition, plaintiff serves other uses and customers in the County of Kootenai, chiefly, irrigation pumping districts situated tributary to the City of Coeur d'Alene. The irrigation districts are dependent upon cheap power and it has been the policy of the State of Idaho to reduce to the lowest possible figure the cost of power to said irrigation districts. The City of Coeur d'Alene benefits largely from said irrigation development. The business of the plaintiff in serving such various and divers uses in relatively large towns, in smaller villages and communities, in rural districts, in electric service to farms, in pumping water for irrigation, in industrial service and in the operations of mines, mills and smelters, is such that each class of business lends substantial aid to the ability to carry on and serve the others. It is impossible to withdraw service from any one class without substantial impairment of plaintiff's ability to serve the others at existing rates.

The taxes paid by plaintiff in the year 1933 upon its electric generating transmission and distribution systems amounted to the sum of more than $214,000.00, of which there was paid to the City of Coeur d'Alene for state, county and municipal taxes within said county, the sum of $66,547.94, and in addition thereto plaintiff paid, pursuant to the laws of the State of Idaho,

the sum of $10,855.74 to irrigation districts in said county, which it would otherwise have been required to pay to the state and its subdivisions, a total in Kootenai County of $77,403.68. The gross electric revenue received from customers in the County of Kootenai amounted to $148,333.16. In addition thereto plaintiff paid to the State of Idaho, on account of power generation in the county, a considerable sum of money under what is known as the "Kilowatt Hour Tax"; and plaintiff's taxes for 1934 to the said government will exceed $250,000.00.

Plaintiff's investment in the distribution system for the City of Coeur d'Alene, exclusive of power generating and transmission equipment, is more than the sum of $200,000.00.

Affiant is familiar with the ordinance referred to in the complaint providing for the incurring of a municipal indebtedness of $300,000.00 for the purpose of acquiring or purchase or construction of an electric power plant or lighting system. Affiant has read the application of the City of Coeur d'Alene to the Federal Emergency Administration of Public Works, together with the report of Franklin P. Wood attached thereto, for a loan and a gift or grant for the construction of said electric generating plant, distribution and street lighting system.

The application and engineer's report disclose that the purpose is to construct a Diesel power generating plant; it is stated that the total cost of the power plant,

distribution system and street lighting sysem is estimated at $337,580.00, of that sum the total cost of labor and materials is estimated at $276,512.19, the contractor's profit at $27,578.09, and the other costs and expenses of construction at $33,480.00.

Affiant has examined the said report of the engineer for the purpose of ascertaining what amount will be expended for labor in the construction of said Diesel plant and distribution system and finds that the total amount to be expended in labor in the construction of the entire electric power and distribution system is the sum of $29,672.75, plus a part of the labor to be used on the building to house said Diesel plant and pumps for city water system, the total amount of said building comes only to $6900.00.

Affiant further states that prior to the election to ratify or reject the said bond issue, Franklin P. Wood of Denver was employed by the defendant City to make a report outlining a plan and reporting as to the feasibility and cost of the municipal light and power system. On or about November 21, 1933 and prior to the election the report was released and publicity was given to it in the Coeur d'Alene press. Affiant attaches hereto photostatic copies of said report published in the Coeur d'Alene papers, to-wit: the Coeur d'Alene Press, a daily newspaper published at Coeur d'Alene, and the Kootenai County Leader, a weekly newspaper published at Coeur d'Alene, Idaho, owned and published by the defendant, J. K. Coe, mayor of Coeur d'Alene. Af-

fiant also attaches a communication published in the Kootenai County Leader on December 8, 1933 signed by the defendant, S. H. McEuen, chairman of the fire, light and water committee of the City of Coeur d'Alene, and an extract from a speech delivered by Franklin P. Wood of Denver at a public meeting in Coeur d'Alene and reported in the Kootenai County Leader on December 11, 1933.

Affiant states that the statement in the letter of the said McEuen "that a higher voltage on the primary side would mean hotter electricity for home uses" is inaccurate and misleading for the reason that the primary voltage on a properly designed distribution system is not the cause of low voltage on the service line of the customer. Affiant further states that there are just so many British Thermal Units in the kilowatt hour and if the system is adequate to deliver power and light, the customer can get just the number of kilowatt hours or British Thermal Units that he desires.

In the application of Coeur d'Alene and in the report of the said engineer attached thereto, it is assumed that an adequate and reliable Diesel electric generating plant could be constructed for $152,955.72, exclusive of overhead, contractor's profit and building to house the plant. The sum is inadequate to furnish the generating plant to supply 80% of the electric power and light load, including 80% of the water pumping load in Coeur d'Alene. To supply 80% would require an expenditure for such Diesel plant, exclusive of such over-

head, contractor's profit and building to house the plant, of the sum of $181,900.00. The report and application further in one place estimates a load of 80% and in another place a total customer list of 2600, which is in excess of the number of customers plaintiff has in the city at this time and more than it has ever had. A Diesel power plant adequate to serve 2600 customers or to supply the said entire city would require four Diesel instead of three, and an expense of not less than $230,000, exclusive of overhead, contractor's profit and building.

In the said report it is assumed and stated that an adequate electric distribution system could be built for the service of said City for $102,632.18, exclusive of contractor's profit and overhead. The report fails to provide for service in two sections of the City, the cost of which is estimated at $16,000.00, and for other scattered customers within the City and along and near to its boundaries. The said two sections are described as follows: (a) the northwest part of the city lying west of Government Way and north of Linden Avenue; (b) the northeast part of the city lying between Fifteenth and Seventeenth Streets and north of Garden Avenue. Within said districts "a" and "b", so omitted and for which service is not provided, plaintiff is now serving 115 electric customers, and approximately 25 in the other scattered areas referred to. It would cost additional money for the City to extend its plant to

serve said scattered customers above refered to.

Affiant says that the distribution system of the type proposed in the engineer's report for the City could not be constructed for less than $136,500.00, exclusive of overhead, contractor's profit and building. Affiant says that taking the contractor's profit, overhead and expense set up in the report of said Engineer Wood together with a Diesel plant of three units and with a distribution system providing for service to 80% of the customers, the cost would exceed $400,000.00, and an adequate Diesel engine plant and distribution system for service to the entire City, with four units, would cost more than $450,000.00.

Affiant says that the estimate of the expense of generation assumed in said report is unreasonably low and below the actual cost necessary to be incurred. Among other things, the amount of fuel oil is computed upon the basis of guaranteed efficiency of the engines instead of expected efficiency—the guaranteed efficiency being that obtained by test runs when the machines are new, and the expected efficiency is the efficiency which may be expected from the machines over a period of years. The cost of fuel oil is estimated and assumed to be 6c per gallon, whereas the cost is actually 6.91c per gallon and may well go higher.

No adequate provision is made to care for and provide free porch lights promised in the communication of Mr. McEuen, which would take approximately 250,000 kilowatt hours per annum.

In affiant's judgment the report fails to take into proper consideration contingencies of competition, possibilities of higher oil costs, of fire, accidents, injuries and to make proper allowance for maintenance and lubricating oil.

Affiant further says that the report assumes and states that inasmuch as 80% of the customers had signified their willingness to buy service from a city-owned system the figures used by the engineer were computed upon the assumption that 80% of the gross business could be obtained by the municipal plant. The report prior to the election further assumed that the gross revenues from electricity in the City would amount to $120,000.00, and the City would receive 80% thereof or $96,000.00. And further assumed that 2,500,000 kilowatt hours per annum would be required for electrical service and 1,110,000 kilowatt hours per annum for pumping water.

Affiant does not know the names of the 80% of the signers refered to, but from his acquaintance with Coeur d'Alene and the electric use in said City, he does not believe that they represent in excess of 40% of the electric energy used by consumers in the City of Coeur d'Alene.

In the report made in December, 1933 and attached to the application of the City to the Federal Emergency Administration of Public Works, something over a month after the previous report, the same engineer

Wood assumes (based upon the same 80% of the gross consumption being purchased from the municipal plant) a consumption of electric current by revenue-producing customers within the city of 3,000,000 kilowatt hours per annum, at an average of 3c per kilowatt hour, a total of $90,000.00, which includes the water pumping. It is further stated that the estimate of future operations takes into consideration 2600 customers by the year 1935. Said report then estimates that the amount to be paid for pumping water would be $12,800.00 per annum, and the electric power required 750,000 kilowatt hours per annum, which amounts to 1.7c per kilowatt hour (given in said report at 1.6c). This would leave for sale to consumers within the city 2,250,000 kilowatt hours per annum, which would be required to produce the balance of the revenue estimated of $90,000.00 or $77,200.00 per annum, an average cost to the consumer of 3.43c per kilowatt hour.

The affiant has caused an investigation to be made and plaintiff now receives in Coeur d'Alene an average of 3.33c per kilowatt hour, exclusive of power used for water pumping.

Any figures based upon a 100% customer load in Coeur d'Alene would require four Diesel Units of the same rating as proposed by the Engineer Wood in order to give adequate service. In the engineer's report it is further stated that the operating costs assumed were based upon a 100% customer load but in the operating cost of the power plant as shown in the report

attached to said application the fuel consumption is based upon 3,500,000 kilowatt hours, which is, according to the first report, adequate only for 80% of the electrical energy used by customers in Coeur d'Alene, so that the statement that in calculating the operating costs it is assumed that the plants are supplying a 100% customer load when as a matter of fact it is based upon either a 75% or 80% customer load as shown by the estimated operating cost of the power plant in the engineer's report is in error.

Affiant gives it as his opinion that a Diesel power plant and distribution system adequate and sufficient to give service to the City of Coeur d'Alene would require an outlay of more than $450,000.00.

Affiant further says that it is impossible to ascertain from the report or application just how much labor will be employed in the construction of said electric plant and distribution system but that the total moneys to be paid therefor, exclusive of the labor for the building to house the Diesel plant and pumping plant, is slightly in exces of $29,000.00. Affiant further says that at present the electric distribution system of the plaintiff in Coeur d'Alene and its water system in Coeur d'Alene give employment to twenty-four people. From an examination of the report of Mr. Wood upon which the cost of operation is based, it appears that about ten men will be employed by both systems and some additional money spent for maintenance but that it is not contemplated to employ as many people as is now given

employment by the plaintiff so that it will result in ultimately reducing employment. The result will be that certain employees of the Washington Water Power Company will of necessity be discharged.

Affiant further says that he has read Release No. 898 dated September 27, 1934, of the Federal Emergency Administration of Public Works, and set forth in full in the complaint. Affiant says that the policy announced therein, to-wit: that the Public Works Administration will make it a practice before approving any such municipal loan to give the public utility company an opportunity to put into effect rates at least as low as proposed by the municipal system has not been given with respect to the application of the City of Coeur d'Alene, as affiant believes it is obvious from the application for said loan and grant made to the said City that the City did not contemplate thereby the putting into effect in said City of rates for electric service lower than those now being charged in said City by the plaintiff; as a matter of fact, as hereinbefore stated, the average rate now being received by the plaintiff is lower than the average cost to the customers in said City proposed in the said application and the engineer's report attached thereto.

Affiant further says that on November 7, 1934 Frank T. Post, President of The Washington Water Power Company, sent a telegram to Honorable Harold L. Ickes, Public Works Administrator, a copy of which is as follows:

"SPOKANE, WASHINGTON
NOVEMBER 7, 1934

HON. HAROLD L. ICKES
PUBLIC WORKS ADMINISTRATOR
WASHINGTON D C

Congressman White of Idaho has recently stated publicly that Public Works Administration has approved application City of Coeur d'Alene Idaho for loan and grant to be used for construction Diesel engine electric generating plant and distribution system in competition with our efficient hydro system stop Feel sure this application has not been called to your attention because its approval would violate statement of principles contained in Public Works Administration press release number nine eighty nine dated September twenty seventh nineteen thirty four stop Our present rates in Coeur d'Alene are among the lowest in the United States and regulated by Idaho Public Utilities Commission stop Application of the City of Coeur d'Alene for loan and grant which we had an opportunity to answer does not contain any schedule of rates which City purposes to put in force if PWA shall loan and give it money with which to build a system to operate in competition with our Company therein stop We have never seen any schedule of rates proposed by the City and it is impossible for the City to make this proposed project self-liquidating under schedules of rates lower than ours stop Construction of Diesel engine plant in Coeur d'Alene at this time would seem to violate all the

principles contained in your press release and in other releases of the PWA not only because of the situation outlined above but also because there is at the present time in this territory a large surplus of hydro generated electric energy which will be greatly augmented by the Government through the Grand Coulee development Stop Feel sure you have no intention to depart from previously announced policies and that Coeur d'Alene application will not be granted Stop Shall greatly appreciate assurance that this situation will be given your personal attention and I will esteem it a privilege to have the opportunity of a personal interview and discussion of whole problem with you.

F. T. POST PRESIDENT
THE WASHINGTON WATER
FTp-w POWER COMPANY"

In reply to the above telegram Mr. Ickes sent the following:

"C 47 58 GOVT WASHINGTON DC NOVEMBER 12

F T POST
PRESIDENT THE WASHINGTON WATER POWER CO SPOKANE WASHN

RETEL SEVENTH DOCKET 6695 COEUR DALENE CITYS PROPOSED ELECTRIC RATES CONTEMPLATE TWENTY PERCENT REDUCTION STOP PROPOSED WA-

TER DEEMED BETTER QUALITY THAN YOURS STOP YOU HAVE ALREADY HAD OPPORTUNITY MEET CITYS PROPOSALS HOWEVER IF YOUR COMPANY PLACES IN EFFECT RATE REDUCTION EQUAL OR GREATER THAN THAT OF CITY ELECTRIC POWER BOARD OF REVIEW WILL CONSIDER MATTER FURTHER

HAROLD L. ICKES ADMINISTRATOR"

And on November 15th Mr. Post replied to Mr. Ickes as follows:

"SPOKANE WASHINGTON
NOVEMBER 15, 1934

HON. HAROLD L. ICKES
PUBLIC WORKS ADMINISTRATOR
WASHINGTON D C

Retel twelfth docket six six nine five Coeur d'Alene in the campaign before the election authorizing bond issue it was not asserted by the city officials or other proponents that if the City should be authorized to go into the electric business there would be any lowering of rates stop It may seem strange to you but the fact is that city officials of Coeur d'Alene at a meeting with the Public Utilities Commission of Idaho stated to that Commission in my presence that they were not interested in any reduction in electric rates but only in municipal ownership stop The original papers filed by Coeur

d'Alene with your Department for a loan and grant did not contain any offer or proposal that there would follow any reduction in electric rates stop We were given a copy of this application and answered it in accordance with its terms stop Several weeks after the Idaho local board had made a report to Washington Mister Coe the Mayor of Coeur d'Alene went to Washington and had a conference with someone unknown to us stop We are not advised as to what he said and we have no copy of any document or paper if any filed by him stop Yesterday we communicated with Mayor Coe and he says that he filed no writing on that subject and that he did have some conversation with some party whose name he refuses to give us and that what was said about reduction of rates he states he does not remember stop Mayor Coe had no authority from the city government to make any representation or proposal on that subject stop We think it is only fair that we should have a copy of any writing or memorandum if any now in this file which relates to any suggestion or proposal for a reduction in rates stop As pertinent to this subject we further suggest the following facts namely of the gross electric revenue received by our Company from electric service rendered in the State of Idaho over eighteen percent is paid back to the people in the form of federal, state county city and other taxes stop The municipalists do not purpose to pay any taxes to the Federal Government nor any state county or school district taxes or any moneys in lieu thereof stop What they may do in the matter of city bookkeeping in the way of shifting from one fund

to another is purely a matter of speculation stop The proposed municipal plant does not cover the entire City but deliberately omits not only a portion thereof within the City limits but also a portion thereof just outside of the city limits in which sections we have over three hundred electric customers stop In other words the municipalists seek to corral the best part of the business and leave the poorest part to this company stop Even this proposed plant cannot be built with the amount of money asked for and to create a plant or a system which would cover the entire territory would materially increase the shortage stop This section of the northwest has been widely advertised for its water power developments and potential developments stop This Company has six hydro plants on the Spokane River one of them being only ten miles from Coeur d'Alene stop The Federal Government is spending many millions in developing two hydro plants in the Columbia River stop The contractors for the Grand Coulee Dam who certainly know their business have built a transmission line from the dam site to Coulee City and entered into a firm contract with this company for all of the electric power needed in that enterprise stop There can be no doubt that these contractors knew all about Diesel engine plants stop That under these circumstances a bureau or board of the Federal Government should seriously consider a proposal to finance and subsidize a Diesel engine electric system in Coeur d'Alene is most surprising stop The rates of our company prevailing in this section are among the lowest in the United States and were so de-

termined by investigators for the Federal Trade Commission stop Pursuant to order of Department of Public Works of the State of Washington this company has been diligently engaged for several months in making a complete detailed inventory of all of its property in the states of Washington and Idaho stop This inventory is now completed and is being checked by engineers and other employes of said department stop In the near future a trial or hearing will be had before said department in which we expect the Public Utilities Commission of Idaho will participate to determine the fair value of all of the electric property of this company and also to determine the reasonableness of all rate schedules stop The rate schedules in each state for comparable cities towns and communities and for agricultural service must of necessity be substantially the same stop Our company is controlled by state laws and by administrative and judicial bodies created by state legislatures stop The law provides that its rates shall be fair just reasonable adequate and non discriminatory and there are severe penalties for violations thereof stop Our Company of course cannot make any binding contracts which might attempt to override or usurp the functions of state regulatory bodies stop We are advised by our lawyers that the Public Works Administrator has no power or authority under the law to make any loan or grant to Coeur d'Alene for the purpose of constructing a Diesel engine electric system stop We make this statement for the purpose of not waiving this point in any litigation that may ensue hereafter if there should be

any such litigation stop As to the contention in the matter of the water system that the proposed water is deemed of better quality than the water that is furnished by us from that great and beautiful lake we beg to state that the record in your files will show that the proponents do not know where they can get this better quality of water stop The suggestion seems to be that they may sink one or several wells but how many and where and the quantity and quality of water obtained therefrom is purely speculative stop The water from the lake furnished by our company has been held to be wholesome and potable in accordance with the standards of the United States Bureau of Health stop Permit me to point out in conclusion that if the City of Coeur d'Alene should construct and operate the proposed system in competition with our company the inevitable result will be that each system will lose money and that the City of Coeur d'Alene now in a precarious financial situation will become bankrupt

F T POST PRESIDENT
THE WASHINGTON WATER
POWER COMPANY"

FTP-W
POSTAL
CHG WWP CO

RICHARD McKAY

Subscribed and sworn to before me this 20th day of November, 1934.

F. MEADE
Notary Public for the State of

(Seal) Idaho, residing at Coeur d'Alene, Idaho.

C. d'A. Press
Nov. 21, '33
Kootenai County Leader
Nov. 21, '33

ENGINEERS REPORT ON WATER AND POWER

Franklin P. Wood, Denver Authority on Water and Power Construction, Summarizes The Situation in Coeur d'Alene

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Franklin T. Wood, Civil Engineer of Denver, Colorado, called here recently by the city, to investigate and make an appraisal of the water system supplying Coeur d'Alene with water, made a voluminous report covering values of the present system and requirements for a new system together with much valuable data concerning the same.

Mr. Wood's was here about two years ago doing preliminary investigating for the city administration, at that time. Mr. Wood's report covers the appraisal; and the engineer in his estimate figured that securing government funds at the rate of 4% interest on 70% of the total would mean that the water system would

pay out in something under 10 years. If however, it was necessary to secure the money thru sales of bonds to private bankers at a higher rate of interest, would then take, according to his estimate, in excess of 15 years to pay out. But either would pay out.

"Unquestionably," says Mr. Wood, "the proper thing to do, if it could be done, would be to purchase both the water and the electric system from the Washington Water Power Company, the present owners; but it is understood that the company will not willingly sell its electric system, therefore, the city would be faced with the necessity, if it decides on municipal ownership of both departments, to construct entirely new electric and water systems, and inasmuch as the present company has a franchise which is good for a number of years yet, it would be necessary to enter into competition with the company." Continuing Mr. Wood's says:

"Under these conditions, we would recommend the construction of wells, a Diesel Engine power plant and electric distribution system and new water distribution system. Using considerable care and assuming that prices will not advance materially in the near future, this would necessitate the issuance of approximately $600,000.00 General Obligation Bonds to be divided as follows:

Water plant & system	$300,000.00
Electric plant & system	300,000.00

"It is improbable that the city could secure all of the business of either of the systems to start with, but it is understood that some 80% of the people have sig-

nified their willingness to buy services from the city owned systems, and therefore the figures will be based on the assumption that 80% of the gross business is obtainable by the city. Exact figures are not obtainable, but best estimates indicate the following.

Gross revenue from electricity	$120,000.00
Gross revenue from water dept.	60,000.00
Total gross revenue	$180,000.00
Proportion city would expect to obtain	$144,000.00

The operation of the combined systems can be taken as follows:

Electrical services	2,500,000 kw.h.
For water pumping	1,110,000 kw.h.
Total	3,610,000

COSTS:

Oil for generating power 330,000 gal. at 6c per gal.		$19,800.00
Lubricating oil		2,000.00

OPERATORS:

1 Chief engineer	$3,000.00	
3 Operators	4,500.00	
1 Helper	1,500.00	
Total Labor		$ 9,000.00
Station Supplies		500.00
Maintenance: 1½% of cost		2,270.00
Total station operation		$33,570.00

OTHER EXPENSES:

General Manager	3,000.00
2 distribution men	3,600.00
1 truck	600.00
Meter reader	1,600.00
Auditing and bookkeeping	3,600.00
Water Maintenance man	3,000.00
Auto and truck expense	900.00
Maintenance	3,000.00
Misc.	1,700.00
Total	$21,000.00
Total operation of both systems	$54,570.00

"This leaves a net from operation of $80,430.00 with which to pay the interest and sinking fund on the outstanding bonds.

"In giving consideration to the acquisition of the Electric department by the city, the fact that the U. S. Government is now starting to build the Coulee Dam and Power Project, should be recognized. When built, it is the intention to the government to make cheap power available thruout the northwest. It is within the range of posibility for Coeur d'Alene to secure power when it is ready, but if it already has a Diesel engine plant, it will be in an advantageous position, because such engines are very satisfactory for standby purpose since they can start at a moments notice. On account of the long transmission line necessary to supply the load here, the engines would form a good talking point.

Every indication points to an increased amount of municipal ownership, and the sooner it is started here the greater will be the advantage. By carrying this plan out now, the government will have a good prospective customer, which in a way might obtain a loan for construction.

"It has been suggested that if the city builds a water and not an electric distribution, it might be possible to put in a smaller Diesel Plant for the purpose of furnishing the power for pumping and also for street lighting, at the same time furnishing some lighting service to the citizens. This would be a possibility, but it must be realized that pole lines would need to be put up all over the town which would cost almost as much as an entire new distribution system. This would increase the cost of the water system around $150,000 and would only permit an increase in gross business of $15,000 or $20,000 per year, and would not really be advisable, since only $150,000 more would be required for the entire system.

"The attached Tables No. 1 and 2 are made up for the purpose of indicating the relative value of obtaining the money from private and government sources. In either case it is assumed that the City would start out with approximately 80% of the business and build it up gradually until it had all of the load.

"WATER SUPPLY. All indications point to an increasing pollution of the lake water due to mill operations near the upper end. It also appears that con-

siderable difficulty is being experienced in keeping surface water out of the intake. When taken 90 feet below the surface as is being done now, it should be reasonably free from contamination, but at any event, it is and will be necessary to continue to treat it for bacteriological content. It would be quite impractical to take out lead and other mineral pollution.

"It seems desirable therefore to consider the use of wells, should the City take over the system separate from or in connection with the electric system.

"Numerous wells in the immediate vicinity indicate the presence of a large body of underground water which is at least as good as the lake water and much less subject to contamination.

"In order to check our conclusions, we had Mr. O. F. Zingraf of Spokane, who has had much experience in well drilling in Idaho, visit the various possible sites and he concurs in the conclusions herein stated, viz., that water in ample supply and of good quality can be obtained by sinking wells. It is probable that such wells would not need to be more than 125 feet deep and water would stand probably within 75 feet of the surface, making pumping costs comparatively inexpensive.

"LOCATION. The old mill site between the town and Tubbs Hill seems to be ideally located for installation of the electric plant and well system. It is on a railtrack, from which a spur could be inexpensively constructed and contains enough land to permit the construction of a building of pleasing appearance, sur-

rounded by lawns and parking to beautify the neighborhood; at the same time there is enough land for industrial plant sites should there be a demand created for them.

"The power plant would be built at the well site and a part of the building would cover it so that the one crew of men could operate both systems.

"However, before actually selecting this site some prospecting should be done for water. $500.00 spent in sinking test wells and investigating the water should enable the city to decide definitely on this point.

"In conection with the plant, we recommend a large reservoir on Tubbs Hill and probably an elevated storage tank in the north end of town to equalize the pressure.

"In conclusion, attention should be drawn to the fact many times pointed out before, that the city and people of Coeur d'Alene are paying for the water and light systems now, but not getting them. Even though it might be possible to only get a part of the business now there is no question but that the bonds will be paid out without the people being assessed anything in the way of taxes to pay therefore.

"In any undertaking of this nature, the interest charges are the principal cause of high rates. If the interest charges could be abolished the actual cost of operation would not be over $1.00 per month for water and 1½c per kilowatt for electricity for the ordinary household.

"The building of the system would put many men to work and be a material benefit in keeping people off of the charity list and it should be understood of course that local people should be employed in so far as possible, and local merchants patronized in the purchases."

Respectfully submitted,

FRANKLIN T. WOOD.

Leader, Dec. 8, 1933.

POSITION OF CITY EXPLAINED ON PLANT OWNERSHIP

Councilman McEuen Turns Light On Proposed Water And Electric Plants and Bond Issue

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The following communication to The Leader is published in full. It comes from a member of the city council, himself a former mayor of Coeur d'Alene, who has been closely allied with public life and the interests of the city for many years. In the present council Dr. McEuen is chairman of the light and water committee, and has taken an active part in promoting the proposed municipal ownership effort of Coeur d'Alene.

Mr. Editor:

I would like at this time to answer the questions that

have been asked, through the Press regarding "What the city council intends to do with the $600,000 bond issue they are asking the voters of this city for?"

It is our intention to build a water, light and power plant. The proceeds from which will be used for the benefit of the community. The question has been raised as to how the plant is to be paid for. The earnings of the plant will be used to pay off all bond indebtedness, by being transferred to the city treasury, then used to pay off the bonds or any other use that may arise. We have data that proves beyond all doubt that a municipal plant in Coeur d'Alene will pay its own way, and that it will not be necessary to raise one penny of taxes on property to pay off any portion of the $600,000 bonds. If the electric light and water business was a poor investment. Why would the United States government be lending aid to cities to acquire their utilities and why would private bonding houses offer to take the bonds as they already have in this particular case?

We intend to build a plant building of a very neat design to house the generating and pumping machinery, that will be a credit to our city, surrounded by a neat park . Three Diesel engines of the latest design, each driving a 500 K. W. A. C. generator with exciter and necessary switching and fuel oil equipment. Also a much larger and better designed electric distribution system, with a higher voltage on the primary side of the transformers, this will mean hotter electricity for home use. We intend to bring out street lighting (which we need

so bad) up to a class with other cities that own their power plants, street lighting that we citizens can be proud of. We intend to connect up all porch lights on the city side of the meter so that each residence can have a porch light all night; also retain the present street lighting system, this will improve our street lighting ten fold. Light is the greatest weapon known to cut down crime.

When the people jointly own their utilities they have no desire to exploit any citizen. This point is emphasized by the freedom that will be given the water users. Each consumer will be allowed to do necessary sprinkling at any time he or she sees fit. There will be no discrimination between residence, heretofore some residnts have been on a meter while their neighbor has not. There will be no residence water meters all consumers will be treated alike.

The water mains of the present system are much too small to adequately supply the amount of water a city of this size requires. The new system as planned is so designed and gridironed as to give a good supply in all parts of the city, much larger mains will be necessary in many places. In the new system there will be only 20 per cent of four inch mains. (Where with the present system, according to the underwriters map, there is 60 per cent four inch mains.) Two reservoirs are contemplated in this system a 2,000,000 gal. reservoir located at an elevation of 225 ft. and a 250,000 gal. elevated steel tank located in the north end of the city

on Locust street. This is to overcome the lack of pressure in that locality. The installation of the water and light systems will put many men to work, who will have to be residents of this city, preferably taxpayers.

Each property holder's water pipes will be connected directly to the city water mains without charge.

The matter of pure water has been given much consideration and in order to obtain pure water supply, it will be necessary to take it from deep wells.

Our engineer while here made a thorough investigation of the conditions of the water mains now in use in our city, by digging down to the water mains. He found the mains in excellent condition but it will be advisable to install new couplings if the city should purchase the present system from the power company. If purchased there will be the same amount of work as there would be if an entirely new system was installed. It is planned to place mains and poles in the alleys wherever possible.

The cost of an entirely new water system including well, pumping machinery, installation, buildings, electric generating machinery and equipment, distribution system is completely covered by the $600,000 appropriation.

A prosperous city can only be built upon cheap power. This plan will give this city power cheap enough so that it can make it an inducement to bring manufacturing to our city, enlarge the city's payroll, which will not only

help the home owner, but will also help the merchant, the landlord and pay grocery bills. This city has lost several such opportunities already by not having cheap power.

We councilmen have spent three years going over this matter, and have considered it very carefully. We own property and we do not feel that in any way are placing a mortgage upon it. We are confident that the plant will pay its way out, will reduce taxes, lower rates and pay into the city treasury a profit each year the same as other municipally owned plants are doing. The average profit made on municipally owned plants in cities of 2500 population is approximately $50,000 per year, up to and over $1,000,000 in large cities. Over 50.7 per cent of all power plants in the United States are municipally owned, there are over 2500 municipal plants. If any one who is in doubt will call at my office I will gladly show them a book showing just what profits the municipally owned plants are making throughout the United States.

Did it ever occur to you that from time to time you have been asked to vote obligation bonds such as for aviation field, street grading, curbing, paving, side walks, sewers, school bonds and for many other improvements? These bonds were a direct lien on your property, you had to dig down in your jeans to pay every cent of them. But when it comes to voting a bond issue that will pay for itself and also return a big profit to the tax payer, you immediately hear a big holler go up that "It

can't be done', It will raise my taxes." Did you ever stop to figure where this big noise came from? The private interests don't like to turn over to the taxpayers what rightfully belongs to them, the profits on the necessities of life, light, power and water.

If you wish in the future to have cheaper rates on water you should vote for both the electric and water bonds. If only the water bonds carry it will be necessary to purchase power from the power company for pumping. The only possible way to get cheap water is to own your electric generating plant then it will be possible to pump water at a very low cost. Many cities who own their own utilities make no charge for pumping. The electric department donates the power to the water department. The little city to the north of us, Bonners Ferry a little over 1,000 population, makes no charge for street lighting and no charge for pumping water for fire hydrant service.

Mr. Taxpayers, by establishing your plant and distribution system you will be in line to buy electricity from the government at Coulee Dam, cheap power and nothing else will build your city. The government is generating electric current at Muscle Shoals at a cost of 1 1-3 mills and is selling it to the Alabama Power Company for 2 mills a K. W. They retail it to the people at 16 cents a kilowatt. Our government has notified the cities that they can have it for 2 mills a kilowatt, if they will install their own distribution systems. Now are we going to be ready when the Coulee Dam is completed to get cheap power?

Vote these bonds and build a future for Coeur d'Alene city.

DR. S. H. McEUEN

Chairman, Fire, Light and Water Committee.

EXTRACT FROM TALK BY FRANKLIN P. WOOD, DENVER ENGINEER

From Kootenai County Leader, Dec. 11, 1933.

Now, let us take some rather specific figures. If you build a new distribution water system, new electric distribution system and new Diesel Oil Engine Power Plant, you can undoubtedly secure 30% as a gift from the government whether you sell your bonds to the government or to private investors. In case of the government, you would pay but 4% interest. If from private sources, probably 6%. In any event you would not have to borrow in excess of $500,000 to construct entirely new systems.

Suppose you went into competition with the Washington Water Power Company. You could undoubtedly get a large share of the load to start with. To carry the bonds will require at least 2-3 of the taxpayers voting for them. This means that you will have 2-3 of the load because they are not going to vote for it unless they want it. Then too, you will have better water and

your own system, and it would be a poor sort of a citizen who would not support his own project. Under these conditions we estimate that you will have a gross revenue from the electric department of at least $100,000 per year and from the water of $60,000 per year, or a total of $160,000. With a modern Diesel Power House and Well Water system, the expense of operation should not exceed $80,000 per year, which leaves a net from operation.

(Title of Court and Cause.)

MOTION

Filed November 20, 1934.

Comes now the plaintiff and moves the court for an injunction pendente lite in the above entitled cause, enjoining and restraining the defendants and each thereof, and their and each of their assistants, agents, employes and attorneys, and all persons acting through or under them, or any of them from proceeding with or making effective any act or transaction in connection with or in furtherance of the construction of a municipal electric generating plant and distribution system, or the financing thereof with Federal Emergency Administration of Public Works funds or gifts or grants, or from issuing, pledging, selling or delivering any bonds of the City of Coeur d'Alene which are purported

to be authorized by Ordinance No. 713, referred to in the complaint, or accepting, using or applying any moneys, the proceeds of any loan, grant or gift from the Federal Emergency Administration of Public Works for any of said purposes, and from the commission of any of the acts complained of in the complaint in said cause; and that this court issue an order to the defendants to show cause at a time and place to be fixed by this court why the said injunction should not be issued.

This motion is made upon the verified complaint filed herein and the affidavit of Richard McKay filed herein, together with the exhibits attached to said complaint and the said affidavit.

JOHN P. GRAY
W. F. McNAUGHTON
ROBERT H. ELDER

(Title of Court and Cause)

MOTION TO DISMISS

Filed December 8, 1934.

Now comes Harold L. Ickes, as Federal Emergency Administrator of Public Works, defendant herein, and moves the court to dismiss the amended bill of complaint filed in this case upon the ground that it does not state any matter of equity entitling the plaintiff to the relief prayed for, nor are the facts as stated suf-

ficient to entitle the plaintiff to any relief against the defendants.

WHEREFORE this defendant prays that the whole of said amended bill of complaint may be dismissed.

HENRY T. HUNT
as Special Assistant to the Attorney General, Attorney for Harold L. Ickes as Federal Emergency Administrator of Public Works.

J. A. CARVER
United States Attorney for Idaho.

E. H. CASTERLIN
Assistant U. S. Attorney for Idaho.

FRANK GRIFFIN
Assistant U. S. Attorney for Idaho.

(Title of Court and Cause.)

MOTION TO DISMISS AMENDED BILL OF COMPLAINT

Filed December 6, 1934.

Now comes the defendants above named, except the defendant Harold L. Ickes, Federal Emergency Administrator of Public Works, and move to dismiss the

Amended Bill of Complaint of plaintiff on file herein, upon the following grounds arising upon the face of said Amended Bill of Complaint, to-wit:

I.

That said Amended Bill of Complaint does not state facts sufficient to constitute a valid cause of action in equity in favor of the plaintiff and against these defendants or any of them.

II.

That the facts alleged in said Amended Bill of Complaint are insufficient to constitute a valid cause of action in equity or to entitle the plaintiff to equitable relief.

III.

That said Amended Bill of Complaint does not state any matter of equity entitling the plaintiff to the relief prayed for, nor are the facts therein stated sufficient to entitle the plaintiff to any relief against these defendants.

WHEREFORE, these defendants pray that said Amended Bill of Complaint be dismissed and that they recover their costs and disbursements herein expended.

W. B. McFARLAND,
C. H. POTTS,
Attorneys for defendants, except defendant, Harold L. Ickes, Federal Emergency Ad-

ministrator of Public Works,
Residence and P. O. Address,
Coeur d'Alene, Idaho.

(Service Acknowledged)

(Title of Court and Cause)

MOTION OF DEFENDANTS, EXCEPT DEFENDANT HAROLD L. ICKES, FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, TO STRIKE REDUNDANT MATTER FROM AMENDED BILL OF COMPLAINT

Filed December 6, 1934.

Now come the defendants above named, except the defendant, Harold L. Ickes, Federal Emergency Administrator of Public Works, and move the Court to strike from the Amended Bill of Complaint the portions thereof hereinafter designated, for the reason that the same are redundant, superfluous, sham and frivolous, and are not material to the alleged cause of action stated in said Amended Bill of Complaint, to-wit:

1.

All that part of Paragraph V, beginning with the words "said power plants" on page 4 of the Amended Bill of Complaint, and continuing to the end of said Paragraph V.

2.

All that part of Paragraph VII, beginning with the words "For the year 1934" in the fourteenth line of page 7, and continuing to the end of said Paragraph VII.

3.

All of Paragraph XII of the Amended Bill of Complaint.

4.

All of Paragraph XIII of the Amended Bill of Complaint.

5.

All of Paragraph XV of the Amended Bill of Complaint.

6.

All of Paragraph XVI of the Amended Bill of Complaint.

7.

All of Paragraph XVIII of the Amended Bill of Complaint.

8.

All of Paragraph XIX of the Amended Bill of Complaint..

9.

All of Paragraph XX of the Amended Bill of Com-

plaint.

W. B. McFARLAND
C. H. POTTS,
Attorneys for defendants, except defendant, Harold L. Ickes, Federal Emergency Administrator of Public Works, Residence and P. O. Address, Coeur d'Alene, Idaho.

(Service Acknowledged)

(Title of Court and Cause)

ORDER

Filed December 13, 1934.

In harmony with the memorandum opinion filed this date, it is ordered that the defendants' motions to dismiss are denied.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause.)

ORDER

Filed December 13, 1934.

In harmony with memorandum opinion filed this date

motion of the defendants, City and its officers, to strike certain allegations from the bill is denied.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause)

OPINION

Filed December 13, 1934.

John P. Gray, W. F. McNaughton, Robert H. Elder, All of Coeur d'Alene, Idaho,

Attorneys for the plaintiff.

W. B. McFarland, C. H. Potts, of Coeur d'Alene, Idaho,

Attorneys for City of Coeur d'Alene, Officers and City Council of said City, Defendants.

Henry T. Hunt, Special Assistant to the Attorney General, Washington, D. C.

John A. Carver, District Attorney for Idaho; E. H. Casterlin, Assistant District Attorney for Idaho; Frank Griffin, Assistant District Attorney for Idaho, all of Boise, Idaho,

Attorneys for Harold L. Ickes, Federal Emergency

Administrator of Public Works, defendant.

CAVANAH, DISTRICT JUDGE:

The Washington Water Power Company engaged in generation and sale of electrical energy in the State of Idaho, and as a franchise holder and tax payer in the City of Coeur d'Alene, brings this suit against the City and certain of its officers and the Administrator of the Federal Emergency Administration of Public Works to restrain their issuing, pledging and selling certain bonds of the City and accepting and applying any loan or grant from the Federal Emergency Administration of Public Works for the construction of a municipal diesel engine generating plant and electrical distribution system and challenges the validity of the plan and proceedings upon the grounds that they are violative of the Fifth, Tenth and Fourteenth Amendments of the Constitution of the United States and of Section Three, Article Eight of the Constitution of the State of Idaho, in that they deprive the plaintiff of its property without due process of law and an unlawful invasion of power reserved to the States and not delegated to the United States when enacting the National Industrial Recovery Act, and that no power is granted to Congress to make a loan or grant of moneys of the United States to the City for the purpose of constructing the plant, and that the loan and grant involved are in excess of and outside the scope of the National Industrial Recovery Act, as they constitute the financing

by the Federal Government of a purely local proprietory business.

The foundation of jurisdiction is the diversity of citizenship and a controversy arising under the constitution and laws of the United States.

The defendants have moved to dismiss the bill and we are confined to the averments of it, which are voluminous, when in solving the questions presented. The essential facts as averred are: that the plaintiff is authorized to engage in the generation and distribution of electrical energy and as a public service corporation owns a hydro-electric power plant situated in the Spokane River at Post Falls, Idaho, about ten miles from the City of Coeur d'Alene, and several other plants situated on the River in the State of Washington, for the purpose of furnishing service to many of its customers and users of power in Northern Idaho and Eastern Washington, and are furnishing and do render electrical service to the territory in Idaho under authority of the Public Utilities Commission of the State; that it has expended more than Five Million Dollars in the construction and improvement of its electrical facilities in Idaho, and has issued and has outstanding bonds and stocks and a substantial portion of its stocks have been sold to its customers and employees and other citizens residing in the territory in which it operates; that its net earnings have been decreased very substantially during the years of the depression by reason of taxes and operating expenses.

On October 19, 1903, the Village of Coeur d'Alene predecessor of the City granted to the predecessor in interest of the plaintiff, a franchise for the furnishing to the inhabitants of the village, electricity for lighting and other purposes for a period of fifty years. In 1930, the plaintiff purchased the system and operated it. Since acquiring it the plaintiff has expended more than thirty-three thousand dollars in improvement and reconstruction of the system, and Twenty-seven Thousand Dollars for installation of new transformers.

The rates charged for such service in Idaho are subject to regulation and control by the Public Utilities Commission of the State.

The City has a population of 8297 and plaintiff does and its predecessor in interest has for more than thirty years furnished electrical service to all classes of customers in the City who number 2377 and 332 additional customers residing in territory adjacent to the City. The investment plaintiff has in the City is more than $200,000.00 and it pays taxes to the Government, State, County and City in large amounts.

On November 2, 1933 the City enacted an ordinance calling for an election for the purpose of submitting to the voters the proposition of the issuance of municipal bonds of $300,000.00 for the purpose of paying the costs and expenses of acquiring, by purchase or construction, a light and power plant and distribution system, and at the same time it also adopted an ordinance providing for the issuance of municipal bonds of $300,-

000.00 to pay the costs and expenses of acquiring by purchase or by construction, a water system. The election was held submitting for approval the two propositions, which resulted in their approval by more than two-thirds vote. After the City Council declared that the bond election had carried, it authorized the proper officers of the City to prepare an application to be made to the Federal Administration of Public Works for funds to construct the water system and light and power plant in the City. Pursuant to the direction of the Council, the officers of the City, on December 14, 1933, filed with the Federal Administration of Public Works application wherein a loan was requested of $650,000.00, and a net loan of $475,000.00 which is alleged to exclude a thirty per cent grant for the cost of labor and materials to be used in the construction of the electric and water systems. In the application it is stated that the total cost of the electric distribution and street lighting system is estimated to be $337,580.00 which is in excess of the amount of indebtedness authorized to be incurred for the purpose mentioned in the ordinance and the election held pursuant to the ordinance. Of the sum of $337,580.00 the total cost of labor and material is estimated at $276,512.91, and the contractor's profit thereon at $27,578.09, a total of $304,091.00 and other costs are estimated to be $44,480.00. Protest against the approval of the application was filed by the plaintiff with the Federal Administration of Public Works but it was approved by the Administrator in the amount of $337,580.00 for the electrical system, of which sum part

is to be a loan and part a grant. The City intends to enter into a contract, which it has already executed, with the Federal Administrator of Public Works for $337,580.00 and to issue and pledge its general obligation bonds as security for the amount of the loan and will construct the electrical system. Further it is alleged that the acts of the defendants will incur an indebtedness and create a liability exceeding the annual income and revenue of the City for that year without the assent of two-thirds of the voters and without provision being made for the collection of an annual tax for the interest on such indebtedness as it falls due and to constitute a sinking fund for the payment of the principal as provided in Section Three of Article Eight of the Constitution of the State of Idaho. That under the laws of the State the Public Utilities Commission has power to regulate and supervise rates and service of the plaintiff in supplying power and light and of any municipally owned utility, the Mayor and Council have exclusive power of regulation of rates and supervision of the service.

It is further alleged that prior to and during the campaign of the election at which the citizens voted on the proposition of issuing the bonds, an engineer employed by the City made an erroneous report as to the feasibility and cost of building a municipal light and power system by the City, and the cost of electric current to the consumers, which was by him at meetings held, and by publication given publicity, and that the voters were not advised of the omission of two sections

of the City from distribution and service as disclosed in the report. Untrue and mis-statements are alleged as having been made and published by the chairman of the fire, light and water committee of the City to the voters as to the cost of each system, not costing more than $300,000.00 and the kind of service to be rendered. The allegation appears that the properties and business of the plaintiff will suffer irreparable injury, disruption and damage if it should lose the electric utility business of the City through the illegal acts of the defendants, and it asserts that the reason thereof is that if the municipal light system is erected it will be compelled either to enter into competition and suffer substantial losses in its operations or abandon entirely its property and system in the City, which would result in discharging of a large number of employees. Its business consists in serving various users in large and small towns, rural districts, farms, mines, mills and smelters, and pumping water for irrigation, and each class lends aid to plaintiff's ability to carry on the others and are incapable of withdrawal without impairment of plaintiff's ability to serve the others. That the plan, if consummated, with the aid of a grant and loan from the Federal Government will result in unemployment of its employees. The application to the administrator is attached to the bill and it is alleged that there was attached thereto the engineer's report as to the type, expense of generation of electricity and cost of the system which is erroneous in many respects; that it is the intention of the defendants, first to construct a plant calculated primarily to serve

the business sections and the more populous sections of the City and that it will be unable to extend the service throughout the entire city with the funds which it has proposed to borrow and receive as a grant from the Federal Government, which will leave the plaintiff the sparsely populated sections of the City wherein the business is unprofitable and where plaintiff, if it continues to do business in the City would be unable to serve at reasonable rates without loss; that in the City's application for the loan and grant for the two systems, one hundred sixty men would be employed in the construction of the plants for a period of six months and in the engineer's report attached to the application, the labor costs of operation will include five men and one clerk, and in the operation of the water system three men and clerical help and office supplies aggregating $2000.00; that the plaintiff at the present time, has employed in the electric light and water service in the City twenty-four employees.

In the release of the Federal Administrator of date September 27, 1934, and other facts stated, it is declared that the purpose which he has adopted with respect to applications of municipalities for loans and grants is to make electricity more available and at cheaper rates than those of the existing utility.

With this recital of the facts as averred in the bill we approach the consideration of the questions involved when applied to them. The plaintiff asserts that it has acquired, under the ordinance of the City, a valid fran-

chise which is a property right, and within the protection of the constitution of the United States, against illegal competition and destruction and that such right is protected under the principles now recognized by the Federal Courts in the cases of Walla Walla City vs. Walla Walla Water Company 172 U. S. 1; Boise Artesian Hot and Cold Water Company vs. Boise City, 230 U. S. 84; Frost vs. Corporation Commission Oklahoma, et al., 278 U. S. 515; City of Campbell, Mo., vs. Arkansas Missouri Power Company, 55 Fed. (2nd) 560; Iowa Southern Utilities Company vs. Cassill et al., (CCA 8th) 69 Fed. (2nd) 703; Missouri Public Service Company vs. City of Concordia, Mo., et al., 8 Fed. Supp. 1; and as a property owner and tax payer in the City it has a right to restrain the City from taking the illegal steps averred in the bill. If the acts of the City as averred in the bill are unconstitutional and invalid there seems to be no doubt but what the plaintiff has a right to restrain the consummation of them if it will suffer a direct injury by reason thereof, but the validity of an act of Congress will not be considered by the Court on the ground that it is merely unconstitutional unless the plaintiff who invokes the power is able to show that it is not only invalid but that it has, or is immediately in danger of sustaining some direct injury as a result of its enforcement. In reply to plaintiff's contention the stress of the argument as urged by defendants is that under the plan for acquiring the electric system, Congress had power to enact the National Industrial Recovery Act from which authority is given

to the Federal Administrator to make the loan and grant for the construction of the system under the commerce and general welfare clauses of the constitution and the existence of an emergency. It is apparent that the National Industrial Recovery Act is predicated upon the thought expressed in it: "That a national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tends to diminish the amount thereof," Section 401, Title 40, USCA, provides: "To affect the purposes of this chapter the President is hereby authorized to create Federal Emergency Administration of Public Works, all of the powers of which shall be exercised by a Federal Emergency Administrator of Public Works." In Section 402 of the act it is also provided: "The administrator, under the direction of the President shall prepare a comprehensive program of Public works, which shall include among other things, the following: (a) Construction, repair and improvement of * * * * * all public buildings and any publicly owned instrumentalities and facilities." Then Section 403 of the act provides: "With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he

may designate or create, (1) to construct, finance, or aid in the construction or financing, of any public-works project included in the program prepared pursuant to section 402; (2) upon such terms as the President shall prescribe, to make grants to states, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project, * * * * * * * *."

These provisions of the act and the facts alleged require the consideration, first; Whether plaintiff will or is in immediate danger of suffering direct injury by reason of the consummation of the plan by the City with the Government. The bill states that as a franchise holder and tax-payer in the City, the plaintiff has an investment in its system of more than Five Million Dollars in Idaho, and more than Two Hundred Thousand Dollars in the City, and pays Government, State, County and City taxes in large amounts; that the plan covering the acquiring and construction of the system calls for an expenditure of $337,580.00, which has been approved by the Administrator and the contract already executed by the City for a loan and grant and which exceeds the amount authorized by the ordinance and voters of the City; that such amount would be insufficient to complete the plant and will leave an incomplete and inadequate plant requiring the levying by the City of a large amount in taxes to complete it; that the plan is unsound from an economic standpoint and will not eliminate unfair competitive practices, but

will tend to promote unfair and illegal competition which will result in a destruction of its property rights and deprive it of the right to continue furnishing electric light and power to the adjacent cities and territories of Northern Idaho, which are connected with its system in the City of Coeur d'Alene. From these and other facts appearing in the bill it would seem that the plaintiff has sufficient amount of interest and will suffer injury by reason of the adoption of the plan and construction of the system, and would as a tax payer be subjected to the payment of an illegal tax if the loan and grant are unauthorized, to entitle it to question the legality of the plan.

Second. Does the commerce clause of the national constitution conferring upon Congress the power to "regulate commerce with foreign nations and among the several states and with the Indian tribes" grant to it the power to make the loan and grant involved in this controversy?

One of the influential causes which lead to the adoption of the constitution was the need of an equitable regulation of commerce and the vesting in Congress power to regulate Interstate commerce so that uniformity of regulation would be insured against discriminating and conflicting state legislation, and the most confusing topic since its adoption in American Constitutional Law is: what is the proper dividing line between the respective powers of Congress and those of the States to regulate commerce? The test as to which has

the power as to a particular matter is not the kind of business one is engaged in but whether the business is carried on between the states or affects them. Whether it is of an interstate or intrastate character is to be determined by what is actually done. The decisions of the Courts have not been uniform upon the subject but the fundamental principles are fairly settled and the difference of opinion manifested in the decisions have been on the application of fundamental principles to the particular facts. The Supreme Court has often said that an arbitrary rule defining the line separating the exclusive power of the Nation from the power of the state cannot be established in view of the particular circumstances and rights involved, but there is uniformity of thought in the decisions that Congressional power over commerce is as to the subject of commerce which are national in their character and require a uniform plan of regulation affecting alike all of the states. It does not extend to regulate purely internal commerce of a state as the state has that reserved right. Kansas vs. Colorado, et al., 206 U. S. 46. Whether the particular transaction or act is one of Interstate Commerce, substance and not form must control.

These principles of limitation of the power of Congress as to the nature and extent of transactions under the commerce clause may be summarized to be, that activities which affect interstate commerce are within the power of the Central Government and Congress having the right in the field of interstate commerce has only power to legislate in matters affecting and obstructing

the free flow of such commerce. The particular facts alleged in the bill and which we are confined to when applying the principles thus stated are; that the City on November 2, 1933, called an election for the purpose of submitting to the voters the propositions of issuance of municipal bonds for $300,000.00 to be used in acquiring by purchase of construction, an electric system, and $300,000.00 to acquire a water system which were approved by a two-thirds vote. It then applied to the Federal Administrator of Public Works for funds of $650,000.00 to construct the two systems, a net loan of $475,000.00 which excludes thirty per cent grant to be used in the construction of the systems. The total cost of the electric system is estimated to be $337,580.00. The type of the electric system is a diesel plant and is to be located and operated within the City and State and to furnish electric current only to inhabitants of the City who will be the only ones to use and be benefited by it. In no way will it be extended across the state line and can only be treated as a local system which will be intrastate, and not interstate and not affecting directly or indirectly interstate commerce. So the application of the National Industrial Recovery Act to the transaction and plan involved in the present case cannot be construed as affecting interstate commerce or justified upon the ground that power is given to the National Government under that clause. Tenth Amendment of United States Constitution. Hammer vs. Dagenhart et al., 247 U. S. 251; Oliver Iron Min. Co. vs. Lord et al., 262 U. S. 172; Child Labor Tax Case, 259 U. S.

20; Kansas vs. Colorado, Supra; Missouri Public Service Co. vs City of Concordia et al., (Supra). We must look beyond the Commerce clause for congressional authority and it is said to be found in the general welfare clause of the constitution.

Third. We come then, next to consider whether Congress under Section 8 of Act 1, of the Constitution, "The Congress shall have power to lay and collect taxes, duties, imposts and excise, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States"; has power to make the loan and grant authorized by the National Industrial Recovery Act when applied to the facts we are considering. The reasons urged by the defendants as to why Congress has such power seems to relate to the extent of the power of Congress and not to the limitations imposed by the constitution on its actions. The uniform interpretation of this clause from the adoption of the constitution by the Courts and interpreters of it is that the Government of the United States can claim no power which is not granted to it by the constitution as it is one of enumerated and delegated powers, its authority being defined and limited by the constitution. Those powers enumerated were all with the view to "common defense and general welfare" and are parts of the sentence which embraced the whole of the eighth section of the first Article. Their objects cannot be stretched beyond the objects indicated in the enumerated powers granted by the Section. The Supreme Court

and interpreters of the constitution have given it the construction that if the welfare be not general but special it is not within the scope of the constitution, and the limitation of the words "general welfare" and its object and operation are to be general and not local. It does not grant power to Congress to appropriate moneys of the National Government for local or state benefit, as such appropriation is restricted to purposes of common defense and of national benefit, affecting the Nation as a whole. This view and spirit of construction was recognized by the Supreme Court when speaking through Mr. Chief Justice Marshall in considering the general welfare clause in the case of Gibbons vs. Ogden, 9 Wheaton 1, where he said "The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular state, which do not effect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Again the Supreme Court confirmed the soundness of the construction given by Chief Justice Marshall in the case of Kansas vs. Colorado (Supra) where it is said: "But the proposition that there are legislative powers affecting the Nation as a whole which belongs to, although not expressed in the grant of powers, is in

direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. It reads: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The argument of counsel ignores the principal factor in this article, to wit, 'the people.' Its principal purpose was not the distribution of power between the United States and the States, but a reservation to the people of all powers not granted. The preamble of the Constitution declares who framed it, 'we the people of the United States,' not the people of one state, but the people of all the states, and Article X reserves to the people of all the States the powers not

delegated to the United States. The powers affecting the internal affairs of the States not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States. The people who adopted the Constitution knew that in the nature of things they could not forsee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and after making provision for an amendment to the Constitution by which any needed additional powers would be granted, they reserved to themselves all powers not so delegated. This Article X is not to be shorn of its meaning by any narrow or technical construction, but is to be considered fairly and liberally so as to give effect to its scope and meaning. As we said, construing an express limitation on the powers of Congress, in Fairbanks v. United States, 181 U. S. 283, 288: 'We are not here confronted with a question of the extent of the powers of Congress but one of the limitations imposed by the Constitution on its action, and it seems to us clear that the same rule and spirit of construction must also be recognized.' * * * * * * * "

The interpretation of the phrase "general welfare" given by Mr. Hamilton, limits its operation in the appropriation of money by Congress to matters general and not local and when Congress pronounces upon the

objects which concern the general welfare the qualification he gives of the generality of the phrase is: "the only qualification of the generality of the phrase in question which seems to be admissible is this; that the object to which an appropriation of money is to be made be general, and not local; its operation extending in fact or by possibility, throughout the Union, and not being confined to a particular spot." Mr. Madison's interpretation seems in effect to be the same when he said: "It has been urged and echoed, that the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,' amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction."

President Monroe when discussing the general welfare clause in a message to Congress expressed the view, that "The substance of what has been urged on this subject may be expressed in a few words. My idea is that Congress have an unlimited power to raise money, and that in its appropriation thay have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, National, not State, benefit." The discretion in Congress to appropriate money is restricted to purposes of a general nature "not local, National, not state benefit," and an appropriation for purely a local purpose would be

an abuse of discretion.

The construction urged by the defendants, that although Congress may not regulate subject-matters on which the Constitution does not authorize legislation, yet it may promote them by appropriation and prescribe how such appropriation shall be applied, as the Constitution leaves it to the discretion of Congress to pronounce upon the objects which concern the general welfare and for which appropriations of money is requisite and proper without any limitation as to the objects being in fact general. Such construction would seem to contradict itself for if Congress is not authorized to legislate upon a certain subject-matter then it would follow that it may not appropriate money to carry out such unauthorized subject-matter. It certainly would not have power in the first instance to authorize the Administrator to construct the system in the City of Coeur d'Alene and if so then an attempt to appropriate money for the City to do so would be indirectly exercising a power it did not have. To say that Congress has power to declare certain purposes to be national when as a matter of fact they are not and have no relation to the Nation and are strictly local in a state, would defeat and nullify the express provisions of the Constitution limiting the power of Congress. The fact here is an apt illustration of this assumed authority, where the construction of a diesel engine plant and light system in and to be used solely by the inhabitants of the City of Coeur d'Alene, would not in any way be for a national purpose and to assert under the facts in

the bill that its construction would relieve unemployment and that an emergency existed does violence to the English language. The true principle is well settled in Linder vs. United States, 268 U. S. 5, as follows: "Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something plainly within power reserved to the States, is invalid and cannot be enforced."

The instances in which Congress has levied taxes and made appropriations to promote purposes deemed by it National are those which in fact may be designated as relating to National matters relieving distress and suffering and are mostly acts applying to matters which come under the commerce clause. The citations urged by the defendants relate to such situations, and do not uphold the contention that the Courts are not empowered to review an act of Congress where it is urged that it is repugnant to the Constitution when in attempting to act or appropriate money of the United States for purposes not related to the powers delegated to Congress by the Constitution. Child Labor Tax case (Supra); Hammer vs. Dagenhart, (Supra); United States, et al. vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 282 U. S. 311; Adair vs. Unit-

ed States, 208 U. S. 161. Applying the Tenth Amendment to the facts here, no power is granted to the National Government to invade the exclusive power and functions of the State to regulate utilities in the state engaged solely in intrastate business and the Court cannot give effect to such legislation although designed to promote the highest good. Tenth Amendment to the Constitution; Child Labor Tax case (Supra); Hart Coal Corporation, et al. vs. Sparks, et al., 7 Fed. Supp. 16.

It is not seriously urged that under the facts alleged in the bill, an emergency in fact exists or to relieve unemployment or distress in the City of Coeur d'Alene, calling for the making the loan and grant. The bill discloses just the opposite, and one would gather from it that the real purpose of making the loan and grant is to bring about the construction of a utility and to regulate the rates for electricity for it clearly indicates that the lowering of rates is the primary purpose and object of the National Government in offering aid to the City as the administrator requires of the City to agree to reduce the rates twenty per cent below those now charged by the plaintiff before the loan and grant will be made, and should the plaintiff reduce its rate to meet the Administrator's approval the loan and grant will be refused. No other reason appears why the loan and grant is being made. Obviously direct control of local utilities operating solely within the State and the regulation of rates is in the State and beyond the power of the National Government.

In the recent case of Missouri Public Service Company v. City of Concordia et al. (Supra) the company a franchise holder and tax payer sought to restrain the City from making financial arrangement with the Administer of Public Works by way of a loan and grant to construct an electric plant and the Court held that the Administrator had no constitutional authority to aid the City in the construction of the project as its operations were purely local and intrastate.

Reliance is had on the recent decision in the case of Missouri Utilities vs. City of California, et al., of date November 2, 1934, unreported, as support of the construction of the general welfare clause urged by defendants to the effect that the object to be obtained is within the power of Congress, because Congress has declared in the Recovery Act that the Administrator shall prepare a program of Public Works which shall include the construction of public buildings and publicly owned instrumentalities and facilities, as the object and the selection of the means if related to it is exclusively within the discretion of Congress. The unsoundness in applying such reasoning to the power of Congress to pronounce upon an object which it thinks concerns the general welfare and to appropriate money of the United States to the instance and plan here, the primary and only object to be obtained is the construction of a municipal electric plant to be located and operated exclusively within the City of Coeur d'Alene, is not one of the objects within the delegated powers granted to Congress or incidental or in relation thereto,

if such be the case then any attempt regardless of the motive to appropriate money of the United States to carry out such unauthorized object would be exercising a power indirectly which could not be done directly and therefore is unconstitutional. Such an interpretation, so urged by the defendants, refutes itself and is an attempt to add to the Constitution a power of Congress that does not exist.

Finally the plaintiff insists that the plan of financing the proposed plant violates section 3 of Article 8 of the State Constitution, as the ordinance which was submitted to the voters provided only for incurring a liability or indebtedness in the sum of $300,000.00, whereas, the plan proposed provides for a plant costing in excess thereof. The provisions of the State Constitution limiting City's indebtedness and liability is: No * * * * * * City shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principle thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void."

The scope of the words "indebtedness or liability" as

employed in the State Constitution is meant to cover all character of debts and obligations which the City may become bound. The Supreme Court of the State has left no doubt as to its construction of this provision, for it has said "The constitution not only prohibits the incurring of any indebtedness, but it also prohibits the incurring of any *liability* 'in any manner or for any purpose' exceeding the yearly income and revenue. In this connection, it should also be observed that it not merely prohibits the incurring any *indebtedness or liability* exceeding the *revenue* of the current year, but it also prohibits the incurring any indebtedness or liability exceeding the *income* and *revenue* provided for such year." Feil vs. City of Coeur d'Alene, 23 Idaho, 32-49, 129 Pac. 643; Miller vs. City of Buhl, 48 Idaho 668, 284 Pac. 843.

In Straughn vs. City of Coeur d'Alene, 53 Idaho 494, 24 Pac. (2nd) 321, the Court held that a tax paying resident and Citizen could maintain a bill to restrain the City from acquiring light and waterworks system under the statute and ordinance imposing a liability upon the City, without providing for annual tax to discharge the liability, contrary to the constitution and gave the same construction of Section 8, Article 1 of the State Constitution as given in its previous decisions. It is obvious that the cost of the electric plant under the plan involved will exceed $300,000.00 the amount authorized by the ordinance and voters of the City, and is void under the State Constitution and decisions of the State Supreme Court.

Application of these principles to the facts appearing in the bill has not occasioned much difficulty and the conclusion reached accords with the general interpretation of the clauses of the constitution, when applied to the provisions of the National Industrial Recovery Act and the facts here involved. To now depart from such interpretation would add to the Constitution a power of Congress which does not exist, without pursuing the method provided in amending it.

From every point of view the loan and grant attempted to be made by the City with the Government cannot be sustained as they are illegal and unauthorized and the conclusion thus reached applies to the consummation of the loan and grant with the Government and the incurring of an indebtedness and liability of cost of acquiring, by purchase or by construction the electric plant in excess of $300,000.00, but with the exception thus stated relative to the loan and grant by the Government, should the City desire to purchase or construct such a plant by the sale or pledging of its bonds in an amount not exceeding $300,000.00, authorized by its ordinance and voters, it may do so in the manner provided for by the State laws.

An Order will be issued restraining the defendants and each of them from carrying out the contemplated loan and grant with the Government during the pendency of suit and until further Order of the Court. The motions to dismiss are denied. Exception granted to the defendants.

(Title of Court and Cause.)

OPINION

Filed December 13, 1934.

John P. Gray, W. F. McNaughton, Robert H. Elder, all of Coeur d'Alene, Idaho, Attorneys for the Plaintiff.

W. B. McFarland, C. H. Potts, of Coeur d'Alene, Idaho, Attorneys for City of Coeur d'Alene, Officers and City Council of said City, Henry T. Hunt, Special Assistant to Attorney General, Washington, D. C., John A. Carver, District Attorney for Idaho; E. H. Casterlin, Assistant District Attorney for Idaho; Frank Griffin, Assistant District Attorney for Idaho, all of Boise, Idaho, Attorneys for Harold L. Ickes, Federal Emergency Administrator of Public Works, Defendants.

CAVANAH, DISTRICT JUDGE:

The motion filed by certain of the defendants to strike portions of paragraphs 5 and 7, and paragraphs 13, 15, 16, 18, 19 and 20 of the bill will be denied.

As to the motion relating to the striking of paragraphs 13, 15 and 18 which are all directed to matters alleged to be erroneous statements made by the engineer at meetings and by publication during the campaign of the City election when the voters of the City were considering voting on the proposition and which in themselves might not be any reason why the election

was not legally held, yet those allegations are so commingled and connected with other allegations in the same paragraph relating to the report of the engineer as to costs, income and expenses of the plant which report was attached to the application of the City to the Administrator for the loan and grant and which it is alleged to be erroneous. It follows it is difficult to strike that without striking all of the paragraphs, portions of which, as stated, relate to the matters in the report of the engineer which was used and attached to the application of the City, for the loan and grant, made to the Administrator.

As to striking paragraph 19 of the bill, it follows that the same should be also denied as allegations there relate to the charge that the plant when constructed, the costs stated will be an insufficient amount, resulting in an uncompleted plant.

Accordingly Order will be entered.

(Title of Court and Cause.)

ORDER GRANTING INJUNCTION PENDENTE LITE

Filed December 31, 1934.

This cause came on to be heard on an order to show cause granted upon the application of the plaintiff and was argued by counsel, and thereupon, upon considera-

tion of the showing made, and the opinion of the court having been filed herein on the 13th day of December, 1934, and it appearing to the court that an injunction pendente lite should be granted herein for the following reasons:

That the Washington Power Company is engaged in generation and sale of electrical energy in the State of Idaho, and is the owner of a franchise in the City of Coeur d'Alene, Idaho, and under said franchise is engaged in furnishing electric light and power to the City and citizens of Coeur d'Alene, Idaho. That said service and the rates for the service is under the regulation and control of the Public Utilities Commission of Idaho.

That on November 2, 1933, the City enacted an ordinance calling an election for the purpose of submitting to the voters the proposition of the issuance of municipal bonds of $300,000.00 for the purpose of paying the cost and expense of acquiring, by purchase or construction, a light and power plant and distribution system; and at the same time it also adopted an ordinance providing for the issuance of municipal bonds of $300,000.-00 to pay the cost and expense of acquiring, by purchase or construction, a water system. Each proposition was approved by more than two-thirds vote and after the approval, the city council authorized the officers of the City to prepare an application to the Federal Emergency Administration of Public Works for funds to construct a water system and a light and power plant and distribution system in the City. Pursuant

to the direction of the council, the officers of the city on December 14, 1933, filed with the Federal Emergency Administration of Public Works an application, wherein a loan and grant was requested of $650,000.00 for said purpose. That the application was protested by plaintiff but it has been approved by the Federal Emergency Administration of Public Works in the amount of $337,580.00 for the electric plant and system, part as a loan and part as a grant, and the City has executed a contract for such loan and grant for that purpose.

That the proposed Diesel Engine electric generating plant and electric light and power distribution system is wholly within the State of Idaho and is in no sense an instrumentality of, or related to, interstate commerce. That said proposed contract providing for a loan and grant is not for the purpose of unemployment relief, but to foster and encourage municipal ownership and to regulate rates and charges for electric service, and is an illegal attempt to usurp the functions and powers of the State of Idaho, and beyond the power of the National Government. That the proposed loan and grant of funds of the United States by the Federal Emergency Administration of Public Works for said purpose is unauthorized and unconstitutional.

That the construction and operation of a competing electric light and power plant and distributing system at Coeur d'Alene would greatly impair, if not destroy, the value of plaintiff's franchise and property in Coeur

d'Alene. That plaintiff's franchise is a valuable right within the protection of the Constitution of the United States against illegal competition and destruction.

That the estimated cost of the proposed power plant and electric distribution and street lighting system is $337,580.00. That the City is and will be without other funds for said purpose, and it is in excess of the amount of indebtedness authorized to be incurred for said purpose; that said loan and grant is illegal and unauthorized and amounts to the incurring of an indebtedness and liability in excess of $300,000.00, in violation of the Constitution of the State of Idaho.

That the Washington Water Power Company is a taxpayer in the City of Coeur d'Alene. That if said loan is made, it will result in direct, immediate and irreparable loss and damage to the plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Pending the final decree in this action, and until further order of this court, the defendants, City of Coeur d'Alene, Idaho, a municipal corporation; J. K. Coe, Mayor; A. Grantham, Treasurer; William T. Reed, Clerk; Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, members of the City Council of said City of Coeur d'Alene; and Harold L. Ickes, as Federal Emergency Administrator of Public Works, and their successors and each of them,

and their privies, and each of their respective officers, agents, counsel, servants and employees, and any and every person acting or attempting to act, are enjoined and restrained from entering into any contract with the Federal Emergency Administration of Public Works for the purpose of providing for, or in furtherance of, the construction of a municipal electric power and generating plant and distribution system, or the financing thereof with Federal Emergency Administration of Public Works funds and from delivering to the Federal Emergency Administration of Public Works any bonds of the City or from accepting or receiving any moneys thereof or therefor, or from accepting any gift or grant on account thereof, or from entering into any contract with respect to the building of, or for the purpose of, or in furtherance of, the construction of a municipal electric power generating and distribution system in the City of Coeur d'Alene.

2. Pending the final decree in this action and until further order of this court, the defendants, City of Coeur d'Alene, a municipal corporation; J. K. Coe, Mayor; A. Grantham, Treasurer; William T. Reed, Clerk; Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, members of the City Council of said City of Coeur d'Alene; and Harold L. Ickes, as Federal Emergency Administrator of Public Works, and their successors and each of them, and their privies and each of their respective officers, agents, counsel, ser-

vants, and employees and any and every person acting or attempting to act, are enjoined and restrained from proceeding with, or making effective any act or transaction in connection with, or in furtherance of, the construction of the municipal electric generating plant and distribution system, or the financing thereof with Federal Emergency Administration of Public Works funds or gifts or grants, or from issuing, pledging, selling or delivering any bonds of said city which are purported to be authorized by said Ordinance No. 713, with Federal Administration of Public Works, or accepting, using or applying any moneys, the proceeds of any loan, grant or gift from the Federal Emergency Administration of Public Works for any of said purposes.

3. This injunction is granted and will be continued, pending final decree in this action, or until the further order of this court upon the condition that the plaintiff will, within five days after entry of this order, file with the clerk of this court, in form and tenor first approved by the judge of this court, a good and sufficient bond or bonds of a surety company or companies, in the sum of SEVENTY-FIVE HUNDRED ($7500.00) Dollars, conditioned upon the prompt payment by the plaintiff to the defendants upon the direction of the court of all costs and damages which may be incurred or suffered by any of them respectively, who may be found to have been wrongfully enjoined or restrained hereby.

Done at Boise, Idaho, this 31st day of December, 1934.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause.)

INJUNCTION BOND

Filed January 5, 1935.

Whereas, an injunction pendente lite and restraining order has been granted by the United States district court for the district of Idaho, Northern Division in the above entitled action on the application of the plaintiff, the Washington Water Power Company, a corporation, restraining the defendants, their successors, privies, and each of their respective officers, agents, counsels, servants, and employees and any and every person acting or attempting to act from entering into any contract with the Federal Emergency Administration of Public Works for the purpose of providing for, or in furtherance of, the construction of a municipal electric power generating and distribution system at Coeur d'Alene, Idaho, or the financing thereof, with Federal Emergency Administrator of Public Works funds, and from delivering to the Federal Emergency Administration of Public Works any bonds of the city or from accepting or receiving any moneys thereof, or

therefor, or from accepting any gift or grant on account thereof, or from entering into any contract with respect to the building thereof, with Federal Emergency Administration of Public Works, pending said action or until the further order of said court.

Now, therefore, we The Washington Water Power Company, a corporation, the plaintiff herein, as principal and Aetna Casualty and Surety Company, a corporation of Hartford, Conn., authorized to do a surety business in the State of Idaho, as surety, do hereby undertake, jointly and severally, to the defendants, J. K. Coe, Mayor; A. Grantham, Treasurer; William T. Reed, Clerk; Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen, and C. C. Hodge, members of the City Council of said City of Coeur d'Alene, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, in the penal sum of Seventy-five Hundred ($7500) Dollars, as fixed by the court upon the condition that plaintiff will pay to the defendants all and singular the costs and damages they or either of them may sustain by reason of such temporary restraining order, if it shall be finally decided the temporary restraining order ought not to have been granted.

THE WASHINGTON WATER
POWER COMPANY

(SEAL) By F. T. POST,
President,
Principal.

AETNA CASUALTY AND SURETY COMPANY,
By OSCAR W. NELSON,
(SEAL) Its Agent and Attorney-in-fact,
Surety.
By A. L. Gridley,
Attorney-in-fact.

Approved this 5th day of January, 1935.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause)

PETITION FOR APPEAL AND ALLOWANCE

Filed January 11, 1935.

TO THE HON. CHARLES C. CAVANAH, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO:

The above named defendants in the above entitled cause, considering themselves aggrieved by the Order Granting Injunction Pendente Lite, entered in the above entitled Court on the 31st day of December, A. D. 1934, in the above entitled cause, do hereby appeal

from the said Order Granting Injunction Pendente Lite, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and pray that their appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and documents, upon which said Order Granting Injunction Pendente Lite was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper Order be made fixing the amount of the bond on appeal to be required of the defendants, except the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, who is exempt from such requirement by the provisions of Sections 869 and 870, of Title 28, of the United States Code.

HENRY T. HUNT, Special Counsel,
JOHN A. CARVER, U. S. Atty.
E. H. CASTERLIN, Assistant,
FRANK GRIFFIN, Assistant.
Attorneys for defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works.

W. B. McFARLAND,
C. H. POTTS,
Attorneys for defendant, City of

Coeur d'Alene, Idaho, a municipal corporation, City Officers and Members of the City Council of said City of Coeur d'Alene, Idaho.

The foregoing Petition is hereby granted and the appeal of the defendants to the Circuit Court of Appeals for the Ninth Circuit from the Order Granting Injunction Pendente Lite, entered in the above entitled Court on the 31st day of December, 1934 is hereby allowed.

It is further ordered that the amount of the bond on appeal to be required of said defendants, except the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works be and the same hereby is fixed at the sum of $500.00.

Dated this 11th day of January, A. D. 1935.

CHARLES C. CAVANAH,

District Judge.

Service of the within Petition for Appeal and Allowance by receipt of a copy thereof, admitted this 9th day of January, 1935.

W. F. McNAUGHTON,
JOHN P. GRAY,
ROBT. H. ELDER,
Attorneys for Plaintiff.

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS

Filed January 11, 1935.

The defendants in the above entitled cause present and file the following Assignment of Errors upon which they will rely upon the prosecution of their appeal to the Circuit Court of Appeals for the Ninth Circuit from the Order Granting Injunction Pendente Lite, made and entered in the above entitled cause in the above entitled Court on the 31st day of December, A. D. 1934, to-wit:

1. The Court erred in granting an Injunction Pendente Lite in said cause.

2. The Court erred in finding, holding and deciding that the proposed contract providing for a loan and grant is not for the purpose of unemployment relief but to foster and encourage municipal ownership, and to regulate rates and charges for electric service.

3. The Court erred in finding, holding and deciding that the proposed contract providing for a loan and grant is an illegal attempt to usurp the functions and powers of the State of Idaho, and beyond the powers of the National Government.

4. The Court erred in finding, holding and deciding that the proposed loan and grant of funds of the United States by the Federal Emergency Administration of

Public Works for said purpose is unauthorized and unconstitutional.

5. The Court erred in finding, holding and deciding that said loan and grant is illegal and/or unauthorized.

6. The Court erred in finding, holding and deciding that said loan and grant amounts to the incurring of an indebtedness and/or liability in excess of $300,000.00, in violation of the Constitution of the State of Idaho.

7. The Court erred in finding, holding and deciding that if said loan is made it will result in direct and/or immediate and/or irreparable loss and damage to the plaintiff.

8. The Court erred in finding, holding and deciding that the Amended Bill of Complaint of plaintiff stated any grounds for the granting of an Injunction Pendente Lite.

9. The Court erred in finding, holding and deciding that the Amended Bill of Complaint stated facts sufficient to constitute a valid cause of action in equity, or to entitle the plaintiff to equitable relief.

10. The Court erred in finding, holding and deciding that the Amended Bill of Complaint states any matter of equity entitling the plaintiff to the relief prayed for therein, or to any relief against the defendants.

11. The Court erred in denying the motion of the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, to dismiss the Amended Bill of Complaint.

12. The Court erred in denying the motion of the defendants City of Coeur d'Alene, Idaho, a municipal corporation, the City Officers and the Members of the City Council of said City of Coeur d'Alene, Idaho, to dismiss the Amended Bill of Complaint.

WHEREFORE, defendants pray that the Order Granting Injunction Pendente Lite, made and entered in said Court on the 31st day of December, A. D. 1934, be reversed, and that the defendants be given such relief as the nature of the case demands.

HENRY T. HUNT, Special Counsel,

JOHN A. CARVER, U. S. Attorney,

E. H. CASTERLIN, Assistant,

FRANK GRIFFIN, Assistant,

Attorneys for defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works.

W. B. McFARLAND,

C. H. POTTS,

Attorneys for defendant, City of Coeur d'Alene, Idaho, a municipal corporation, City Officers and Members of City Council of said City of Coeur d'Alene, Idaho.

Service of the foregoing Assignment of Errors ad-

mitted and a copy thereof received this 9th day of January, A. D. 1935.

JOHN P. GRAY,
W. F. McNAUGHTON,
ROBT. H. ELDER,
Attorneys for Plaintiff.

(Title of Court and Cause)

CITATION ON APPEAL

Filed January 16, 1935.

THE PRESIDENT OF THE UNITED STATES TO THE WASHINGTON WATER POWER COMPANY, a corporation, the above named plaintiff, and to JOHN P. GRAY, W. F. McNAUGHTON, and ROBERT H. ELDER, ATTORNEYS FOR PLAINTIFF:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Idaho, Northern Division, wherein the City of Coeur d'Alene, Idaho, a municipal corporation, J. K. Coe, Mayor, A. Grantham, Treasurer, William

T. Reed, Clerk, Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loizel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, members of the City Council of said City of Coeur d'Alene, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, are appellants, and the Washington Water Power Company, a corporation, is appellee, to show cause, if any there be, why the said order granting injunction pendente lite, in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Charles C. Cavanah, Judge of the District Court of the United States for the District of Idaho, this 11th day of January, A. D. 1935, and of the Independence of the United States, the One Hundred and Fifth-*eighth*, at the City of Boise, State of Idaho.

CHARLES C. CAVANAH,
District Judge.

Attest:
W. D. McREYNOLDS,
(SEAL) Clerk.

Copy of the within and foregoing Citation on Appeal received this 14th day of January, A. D. 1935.

JOHN P. GRAY,
W. F. McNAUGHTON,
ROBT. H. ELDER,
Attorneys for Plaintiff.

(Title of Court and Cause)

BOND ON APPEAL

Filed January 26, 1935.

KNOW ALL MEN BY THESE PRESENTS, That we, City of Coeur d'Alene, Idaho, a municipal corporation; J. K. Coe, Mayor; A. Grantham, Treasurer; William T. Reed, Clerk; Lee Stoddard, Otto Gladden, Frank H. Lafrenz, Joseph Loisel, O. M. Husted, Cassius Robinson, S. H. McEuen and C. C. Hodge, Members of the City Council of said City of Coeur d'Alene, Idaho, as principals, and AMERICAN SURETY COMPANY, a corporation, organized and existing under and by virtue of the laws of the State of New York, as surety, are held and firmly bound unto the Washington Water Power Company, a corporation, the above named plaintiff in the sum of Five Hundred and No/100 ($500.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, jointly and severally, and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of January, A. D. 1935.

WHEREAS, the above named defendants, the principals in this obligation, have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse an

Order granting injunction pendente lite, made and entered in said cause on the 31st day of December, A. D. 1934, in favor of the plaintiff in the above entitled action.

NOW, THEREFORE, the condition of this obligation is such that if the above named defendants shall prosecute their said appeal to effect and shall answer all costs if they fail to make their plea good, and/or if they shall fail to sustain their appeal, then this obligation shall be void; otherwise to remain in full force and effect.

CITY OF COEUR D'ALENE,
IDAHO, a municipal corporation,
BY J. K. COE,
Mayor,

ATTEST:
WILLIAM T. REED,
City Clerk.
(SEAL)

J. K. COE, Mayor,
A. GRANTHAM, Treasurer,
WILLIAM T. REED, Clerk,
LEE STODDARD,
OTTO H. GLADEN,
F. H. LAFRENZ,
JOSEPH LOISEL,

O. M. HUSTED,

C. C. ROBINSON,

S. H. McEUEN,

C. C. HODGE,

Members of City Council of said City of Coeur d'Alene, Idaho,

Principals.

AMERICAN SURETY COMPANY,

By OSCAR W. NELSON,
Its Attorney-in-fact,

By A. L. GRIDLEY,
Its Attorney-in-fact,

(SEAL) Surety.

STATE OF IDAHO, }
County of Kootenai, } ss.

On this 18 day of January, A. D. 1935, before me WILLIAM B. McFARLAND, a Notary Public in and for the State of Idaho, personally appeared OSCAR W. NELSON, and A. L. GRIDLEY, known to me to be the Attorney-in-fact and Attorney-in-fact, respectively, of AMERICAN SURETY COMPANY, the corporation that executed the within and foregoing instrument as surety, and acknowledged to me that such corporation executed the same; that they

know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said Company; that they signed their names thereto by like order; that the said Company has been duly licensed by the Commissioner of Finance of the State of Idaho to transact business in the State of Idaho, and that it is authorized by the laws of the State of Idaho to become sole surety upon bonds.

WILLIAM B. McFARLAND,
Notary Public in and for the State of Idaho, residing at Coeur d'Alene, Idaho.
My Commission Expires July 29, 1938.

(SEAL)

The within Bond on Appeal is approved both as to sufficiency and form, this 24th day of January, A. D. 1935.

CHARLES C. CAVANAH,
Judge.

(Title of Court and Cause.)

PRAECIPE

Filed January 11, 1935.

To W. D. McREYNOLDS, Clerk of the District

Court of the United States, for the District of Idaho:

You will please prepare a transcript on appeal herein, including therein the following papers, towit:

Amended Bill of Complaint.

Affidavit of Richard McKay, filed in support of Motion for Injunction Pendente Lite.

Motion for Injunction Pendente Lite.

Motion of defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, to dismiss amended bill of complaint.

Motion of defendants, City of Coeur d'Alene, Idaho, a municipal corporation, City Officers and Members of the City Council of said City of Coeur d'Alene, Idaho, to Dismiss Amended Bill of Complaint.

Motion of defendants, City of Coeur d'Alene, Idaho, a municipal corporation, City Officers and Members of the City Council of said City of Coeur d'Alene, Idaho, to strike redundant matter from Bill of Complaint.

Order denying Defendants' Motions to Dismiss Amended Bill of Complaint, filed December 13, 1934.

Order denying Motion of Defendant, City of Coeur d'Alene, Idaho, a municipal corporation, et al., to strike redundant matter from Amended Bill of Complaint.

Opinion of Honorable Charles C. Cavanah, District Judge, filed December 13, 1934, denying Motions to

Dismiss and directing issuance of Order Restraining the defendants, and each of them, from carrying out the contemplated loan and grant with the government during the pendency of suit, and until further order of the court.

Opinion of Honorable Charles C. Cavanah, District Judge, filed December 13, 1934, denying Motion of certain of the defendants to strike redundant matter from amended bill of complaint.

Order granting Injunction Pendente Lite, dated and filed December 31, 1934.

Undertaking on Injunction.

Petition for Appeal and Allowance, with order allowing appeal, and fixing amount of bond on appeal, and acknowledgement of service.

Assignment of Errors and acknowledgement of service.

Citation on Appeal, and acknowledgement of service.

Bond on Appeal.

This Praecipe.

Certificate of the Clerk.

HENRY T. HUNT, Special Counsel,

JOHN A. CARVER, U. S. Atty.

E. H. CASTERLIN, Assistant,

FRANK GRIFFIN, Assistant.
Attorneys for defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works.

W. B. McFARLAND,

C. H. POTTS,

Attorneys for defendants, City of Coeur d'Alene, a municipal corporation, City Officials and Members of the City Council of the said City of Coeur d'Alene, Idaho.

Service of the within Praecipe by receipt of copy thereof, admitted this 9 day of January, A. D. 1935.

JOHN P. GRAY,

W. F. McNAUGHTON,

ROBT. H. ELDER,

Attorneys for plaintiff.

(Title of Court and Cause)

CERTIFICATE OF CLERK

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered 1 to 213 inclusive, to be full, true and correct copy of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe filed herein. I further certify that the cost of the record herein amounts to the sum of $292.40 and that the same has been paid by the appellant.

WITNESS my Hand and the seal of said Court this 8th day of February, 1935.

(SEAL) W. D. McREYNOLDS, Clerk.